

MAR 26 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ANTHONY FRANCIS BOOK,

Defendant - Appellant.

No. 08-30335

D.C. No. 4:08-CR-00051-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Anthony Francis Book appeals from the 300-month sentence imposed following his guilty-plea conviction for conspiracy to possess methamphetamine

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

with intent to distribute, in violation of 21 U.S.C. §§ 846 and 851. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Book contends that the district court erred by failing to treat his two prior felony drug convictions as a single conviction for purposes of a sentence enhancement under 21 U.S.C. § 841(b)(1)(A), and that his overall sentence is substantively unreasonable. We decline to reach these contentions because Book pleaded guilty pursuant to a plea agreement in which he knowingly and voluntarily waived his right to appeal the sentence. *See United States v. Bibler*, 495 F.3d 621, 623-24 (9th Cir. 2007).

Book contends that his appeal waiver is inapplicable because the district court's failure to treat his two prior felony drug convictions as a single conviction resulted in a disproportionate sentence that violates the "cruel and unusual punishment" clause of the Eighth Amendment. This contention fails. Although an appeal waiver will not apply if the sentence violates the Constitution, *see id.* at 624, Book's sentence is well below the maximum term allowed and is not "so 'grossly out of proportion to the severity of the crime' as to shock our sense of justice." *See United States v. Cupa-Guillen*, 34 F.3d 860, 864 (9th Cir. 1994).

DISMISSED.