

SEP 01 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NOT FOR PUBLICATION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.

VICTOR IGBINWEKA,

Defendant - Appellant.

No. 08-50008

D.C. No. CR-07-00209-JSL(1)

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
J. Spencer Letts, District Judge, Presiding

Submitted August 30, 2010**
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **O'SCANLAIN** and **GOULD**, Circuit
Judges.

Under the terms of his plea agreement, Igbineweka waived the right to
appeal his custodial sentence. See United States v. Martinez, 143 F.3d 1266, 1271

* 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).

(9th Cir. 1998). The government didn't breach the agreement or waive his waiver, nor did the district court advise Igbneweka that he could appeal that part of his sentence. The agreement permitted him to appeal the amount of restitution, but he didn't object to the "actual loss" calculation in the presentence report. The district court was therefore entitled to treat it as a finding of fact. Fed. R. Crim. P.

32(i)(3)(A). We do not review the ineffective assistance claim on this direct appeal because the record is insufficient to evaluate it. See United States v. Jeronimo, 398 F.3d 1149, 1155–56 (9th Cir. 2005).

AFFIRMED.