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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>DANG VAN PHAM, a.k.a. John D. Pham,</p> <p>Defendant - Appellant.</p>
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No. 09-50511

D.C. No. 2:08-cr-00510-AHM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Dang Van Pham appeals from the 37-month sentence imposed following his guilty-plea conviction for willful failure to pay withheld payroll taxes, and aiding and abetting, in violation of 26 U.S.C. § 7202 and 18 U.S.C. § 2. We dismiss.

* 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).

Pham contends that the district court's application of the two-level offense role enhancement under U.S.S.G. § 3B1.1(c) is not supported by the record and violates his due process rights. We are precluded from reaching the merits of Pham's claim by a valid appeal waiver. *See United States v. Nunez*, 223 F.3d 956, 958-59 (9th Cir. 2000); *see also United States v. Bibler*, 486 F.3d 621, 624 (9th Cir. 2007).

DISMISSED.