

MAR 16 2011

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NOT FOR PUBLICATION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.

DOUGLAS MARTIN KORN,

Defendant - Appellant.

No. 09-50643

D.C. No. 2:08-cr-00385-VBF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Valerie Baker Fairbank, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Douglas Martin Korn appeals from the 135-month sentence imposed following his guilty-plea conviction for drug crimes, in violation of 21 U.S.C. §§ 841, 846, and 18 U.S.C. § 2(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Korn contends that he was subjected to sentencing entrapment because he lacked the predisposition to sell methamphetamine in the quantity involved in this case. He argues that remand is necessary because the district court did not make an express finding regarding his predisposition. These contentions fail because the district court found that Korn had failed to establish that he lacked either the intent or the capability to produce the quantity of drugs at issue, *see United States v. Naranjo*, 52 F.3d 245, 250 (9th Cir. 1995), and because there is no evidence that the government engaged in outrageous conduct or actively induced Korn to sell a greater quantity of methamphetamine in order to maximize his sentence, *see United States v. Schafer*, 625 F.3d 629, 639-40 (9th Cir. 2010).

AFFIRMED.