

FEB 23 2012

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NOT FOR PUBLICATION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.

NELSON GUTAMA-CRIOLLO,

Defendant - Appellant.

No. 10-30358

D.C. No. 2:10-cr-00083-RAJ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Nelson Gutama-Criollo appeals from the 63-month sentence imposed following his guilty-plea conviction for conspiracy to distribute heroin, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C), and 846. We have jurisdiction under 28

* 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).

U.S.C. § 1291, and we dismiss.

Gutama-Criollo contends that the district court erred in applying a two-level role enhancement, pursuant to U.S.S.G. § 3B1.1(c). The valid and enforceable appeal waiver precludes our review of this contention. *See United States v. Watson*, 582 F.3d 974, 987-88 (9th Cir. 2009) (appellate waiver remains enforceable where the district court's comments regarding right to appeal are qualified).

DISMISSED.