

FEB 24 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NOT FOR PUBLICATION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.

JORGE ALEJANDRO GUTIERREZ,

Defendant - Appellant.

No. 09-50607

D.C. No. 2:08-cr-01418-PSG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted February 21, 2012**

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

Jorge Alejandro Gutierrez appeals from the 188-month sentence imposed following his guilty-plea conviction for possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). We have

* 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).

jurisdiction under 28 U.S.C. § 1291, and we affirm in part and dismiss in part.

Gutierrez contends that his sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment because it is grossly disproportionate to his offense. This contention lacks merit. *See United States v. Jensen*, 425 F.3d 698, 708 (9th Cir. 2005) (rejecting an Eighth Amendment disproportionality challenge to a life sentence for a defendant convicted of possession with intent to distribute methamphetamine).

Gutierrez further contends that his sentence is substantively unreasonable. As Gutierrez has conceded, however, his plea agreement includes a valid appeal waiver which precludes us from addressing this contention.

AFFIRMED in part; DISMISSED in part.