

OCT 17 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NOT FOR PUBLICATION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.

ANDREI MIREL,

Defendant - Appellant.

No. 11-30303

D.C. No. 1:11-cr-00101-EJL

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Andrei Mirel appeals from the 38-month sentence imposed following his guilty-plea conviction to improper entry by an alien, in violation of 8 U.S.C. § 1325(a); use of a false or altered passport, in violation of 18 U.S.C. § 1543; and

* 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).

wire fraud, in violation of 18 U.S.C. § 1343. We dismiss.

Mirel contends that the district erred by relying on the presentence report, rather than the parties' stipulation, to determine the loss amount under U.S.S.G. § 2B1.1(b)(1), and by imposing a substantively unreasonable sentence. We are precluded from reaching the merits of Mirel's claim by a valid appeal waiver. *See United States v. Watson*, 582 F.3d 974, 988 (9th Cir. 2009). Contrary to Mirel's contention, the district court did not impose a sentence that exceeds the advisory Sentencing Guidelines range as determined by the court that would trigger one of the appeal waiver exceptions set forth in the plea agreement.

DISMISSED.