

MAY 20 2013

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NOT FOR PUBLICATION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.

RICKY RENARD TODD,

Defendant - Appellant.

No. 11-50455

D.C. No. 2:08-cr-00396-VBF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted May 14, 2013**

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Ricky Renard Todd appeals from the district court's judgment and challenges the 162-month sentence imposed following his guilty-plea conviction for conspiracy to distribute cocaine base in the form of crack cocaine, in violation of 21 U.S.C. § 846. 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).

Todd contends that the district court procedurally erred at sentencing and imposed a substantively unreasonable sentence. The government argues that the appeal is barred by a valid appeal waiver. We review de novo whether a defendant has waived his right to appeal. *See United States v. Watson*, 582 F.3d 974, 981 (9th Cir. 2009).

Under the terms of Todd's binding plea agreement, he waived the right to appeal "any sentence imposed by the Court," and "the manner in which the sentence is determined," provided that the sentence fell within the stipulated range, as it did here. Todd contends that he is nonetheless entitled to bring this appeal because he reserved the right to appeal based on explicitly retroactive changes to the applicable Sentencing Guidelines and statutes. This argument fails because under the terms of the waiver, a challenge based on such retroactive changes may be made only by way of a post-conviction collateral attack. Because the waiver applies and is enforceable, we dismiss. *See id.* at 988.

DISMISSED.