

FEB 26 2014

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NOT FOR PUBLICATION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.

TIMOTHY JOHN YOST,

Defendant - Appellant.

No. 12-10652

D.C. No. 4:12-cr-01612-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James P. Jones, District Judge, Presiding**

Submitted February 18, 2014***

Before: ALARCÓN, O’SCANNLAIN, and FERNANDEZ, Circuit Judges.

Timothy John Yost appeals from the district court’s judgment and challenges the 21-month sentence imposed following his guilty-plea conviction for

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable James P. Jones, United States District Judge for the Western District of Virginia, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

conspiracy to transport illegal aliens for the purpose of commercial advantage or private financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I), (a)(1)(A)(ii), and (a)(1)(B)(i). We dismiss.

Yost contends that the district court erred by ordering that his federal sentence run consecutively to an anticipated state sentence that had not yet been imposed at the time of federal sentencing. The government argues that this 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 his plea agreement, Yost waived any right to appeal the imposition of sentence. Yost does not contend that the appeal waiver is invalid or inapplicable here; nor is the sentence illegal. *See United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007) (“A sentence is illegal if it exceeds the permissible statutory penalty for the crime or violates the Constitution.”); *see also Setser v. United States*, 132 S. Ct. 1463, 1473 (2012) (district court may order sentence to run consecutively to an anticipated state sentence). Accordingly, we dismiss in light of the valid appeal waiver. *See Watson*, 582 F.3d at 988.

DISMISSED.