

MAR 13 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NOT FOR PUBLICATION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.

JOSEPH J. VIOLA, a.k.a. Giuseppe Viola,

Defendant - Appellant.

No. 12-10091

D.C. No. 5:10-cr-00588-EJD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted March 10, 2014**

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

Joseph J. Viola appeals pro se from the district court's judgment and challenges his guilty-plea conviction and 105-month sentence for mail fraud, in violation of 18 U.S.C. § 1341. 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).

The government argues that this appeal is barred by the appeal waiver in the parties' plea agreement. Viola contends that the waiver is unenforceable, asserting that the government breached the plea agreement, primarily by recommending a total offense level that was higher than that indicated in the plea agreement. 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).

The record reflects that the government's computation of the total offense level was consistent with the calculations in the plea agreement. Viola's remaining allegations of breach are unavailing because they relate to actions taken by the Probation Office, which was not a party to the plea agreement. Because the appeal waiver applies and is enforceable, we dismiss. *See id.* at 988.

All pending motions are denied as moot.

DISMISSED.