

MAR 16 2015

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NOT FOR PUBLICATION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.

JUAN ALBERTO SALMERON-OZUNA,
a.k.a. Juan Salmeron-Ozuna,

Defendant - Appellant.

No. 13-10366

D.C. No. 4:11-cr-02983-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted March 10, 2015**

Before: FARRIS, WARDLAW, and PAEZ, Circuit Judges.

Juan Alberto Salmeron-Ozuna appeals from the district court's judgment and challenges the 57-month sentence imposed upon remand following his guilty-plea conviction for reentry after deportation, in violation of 8 U.S.C. § 1326. We

* 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).

dismiss.

Salmeron-Ozuna contends that the district court committed procedural and substantive sentencing errors. The government contends that this appeal should be dismissed based on an appeal waiver. Salmeron-Ozuna argues that the appeal waiver cannot be enforced because the waiver is vague and his sentence is not consistent with the plea agreement. We review *de novo* whether to enforce an appeal waiver. *See United States v. Watson*, 582 F.3d 974, 981 (9th Cir. 2009). We are unpersuaded that the appeal waiver is ambiguous in light of the clarifying colloquy at the change of plea hearing. Furthermore, Salmeron-Ozuna's sentence is consistent with the plea agreement because his predicate conviction for threatening a federal officer "has as an element the . . . threatened use of physical force against the person of another." U.S.S.G. § 2L1.2(b)(1)(A)(ii), cmt. n.1(B)(iii). Accordingly, we dismiss this appeal in light of the valid appeal waiver. *See Watson*, 582 F.3d at 988.

DISMISSED.