

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 30 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RANDALL KAWIKA CHAR, a.k.a.
Randall K. Char,

Defendant - Appellant.

No. 14-10130

D.C. No. 1:12-cr-00507-DKW

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Derrick Kahala Watson, District Judge, Presiding

Submitted April 22, 2015**

Before: GOODWIN, BYBEE, and CHRISTEN, Circuit Judges.

Randall Kawika Char appeals from the district court's judgment and challenges the 180-month sentence imposed following his guilty-plea conviction for two counts of distribution of 50 grams or more of methamphetamine, in violation of

* 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).

21 U.S.C. § 841(a)(1) and (b)(1)(A). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

Char contends that the district court procedurally erred in several ways. We agree that the district court erred by failing to calculate a revised mandatory minimum sentence after granting the government's substantial assistance motion under 18 U.S.C. § 3553(e). *See United States v. Lee*, 725 F.3d 1159, 1167-68 (9th Cir. 2013) (per curiam). Accordingly, we vacate the sentence and remand for resentencing. *See id.* at 1169.

On remand, we advise the district court to first determine the extent of its downward departure under section 3553(e) without consideration of factors unrelated to Char's assistance, and then determine whether the full extent of the departure is warranted in light of the 18 U.S.C. § 3553(a) factors. *See United States v. Jackson*, 577 F.3d 1032, 1036 (9th Cir. 2009). The government should also clarify whether it intended to withdraw the Special Information filed pursuant to 21 U.S.C. § 851.

In light of this disposition, we do not reach Char's remaining claims.

VACATED and REMANDED for resentencing.