

JUL 10 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NOT FOR PUBLICATION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.

JESUS E. ELIZONDO,

Defendant - Appellant.

No. 14-30093

D.C. No. 2:13-cr-00024-SEH-2

ORDER OF DISMISSAL*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted July 8, 2015**
Portland, Oregon

Before: N.R. SMITH and OWENS, Circuit Judges, and HAYES, *** District Judge.

Defendant Jesus E. Elizondo appeals the district court's denial of the government's motion for downward departure under U.S.S.G. § 2D1.1. This

* 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 Honorable William Q. Hayes, District Judge for the U.S. District Court for the Southern District of California, sitting by designation.

appeal incorporates a challenge to his 120-month sentence imposed following his guilty plea to one count of conspiracy to possess with intent to distribute methamphetamine in violation of 21 U.S.C. § 846.

In his plea agreement, Elizondo waived his right “to appeal from the sentence imposed by the Court.” Elizondo contends that the waiver does not bar this appeal because he challenges the “judgment”—the district court’s denial of the U.S.S.G. § 2D1.1 motion—and not the sentence imposed. However, in this case, there is no distinction between a challenge to the district court’s decision to deny the government’s motion for downward departure and a challenge of the sentence imposed. *See United States v. Jeronimo*, 398 F.3d 1149, 1154 (9th Cir. 2005). Thus, the waiver bars this appeal, and we dismiss. *United States v. Watson*, 582 F.3d 974, 988 (9th Cir. 2009).

DISMISSED.