

FEB 12 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>KEVIN DARNELL MILES,</p> <p>Defendant - Appellant.</p>

No. 15-30004

D.C. No. 2:13-cr-00008-WFN-28

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, Senior District Judge, Presiding

Submitted February 5, 2016**
Seattle, Washington

Before: O’SANNLAIN and GOULD, Circuit Judges and BURNS,*** District Judge.

Kevin Miles challenges the 144-month sentence imposed following his guilty-plea convictions for conspiring to distribute oxycodone-based pills in

* 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 Larry A. Burns, District Judge for the U.S. District Court for the Southern District of California, sitting by designation.

violation of 21 U.S.C. §§ 846 and 841(a)(1). We have jurisdiction under 18 U.S.C. § 3742 and 28 U.S.C. § 1291.

Miles' appeal is barred by the waiver of appeal provision in his plea agreement. *See United States v. Bibler*, 495 F.3d 621, 623–24 (9th Cir. 2007). The illegal sentence exception does not apply because Miles' due process contention lacks merit. His argument that the district court violated his rights under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 133 S. Ct. 2151 (2013), fails because the district court's drug quantity findings didn't affect the statutory maximum sentence nor subject him to a mandatory minimum sentence. *See United States v. Vallejos*, 742 F.3d 902, 906–07 (9th Cir. 2014).

DISMISSED.