

JAN 23 2017

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PETER MALIVAO,

Defendant-Appellant.

No. 15-10449

D.C. No. 1:13-cr-00885-LEK

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Hawaii  
Leslie E. Kobayashi, District Judge, Presiding

Submitted January 18, 2017\*\*

Before: TROTT, TASHIMA, and CALLAHAN, Circuit Judges.

Peter Malivao appeals from the district court's judgment and challenges the 156-month sentence imposed following his guilty-plea conviction for conspiracy to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. We have jurisdiction under 28 U.S.C.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We dismiss.

Malivao contends that the district court failed to resolve his factual objections to the presentence report, in violation of Federal Rule of Criminal Procedure 32, and that he received ineffective assistance of counsel at sentencing. The government argues that the appeal should be dismissed based on the appeal waiver contained in the parties' plea agreement. Reviewing de novo, *see United States v. Watson*, 582 F.3d 974, 981 (9th Cir. 2009), we dismiss. Contrary to Malivao's contention, the appeal waiver is supported by adequate consideration. Further, the record on appeal is not sufficiently developed to evaluate Malivao's claims of ineffective assistance of counsel. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011) (declining to consider a claim of ineffective assistance of counsel on direct appeal raised in response to the government's assertion of an appeal waiver).

**DISMISSED.**