

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 23 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRAULIO BARAJAS-ZARATE,

Defendant-Appellant.

No. 15-30358

D.C. No. 4:14-cr-06041-EFS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted January 18, 2017**

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

Braulio Barajas-Zarate appeals from the district court's judgment and challenges the 60-month sentence imposed following his guilty-plea conviction for conspiracy to distribute cocaine, in violation of 21 U.S.C. § 846. We dismiss.

Barajas-Zarate challenges the district court's denial of safety-valve relief

* 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).

under 18 U.S.C. § 3553(f). The government contends that this appeal is barred by a valid appeal waiver. We review de novo whether a defendant has waived his right to appeal. *See United States v. Harris*, 628 F.3d 1203, 1205 (9th Cir. 2011).

The terms of the appeal waiver in Barajas-Zarate's plea agreement unambiguously encompass this appeal of his within-Guidelines sentence. *See id.* at 1205-06.

Contrary to Barajas-Zarate's contention, the record reflects that he knowingly and voluntarily waived his right to appeal. We decline to consider on direct appeal

Barajas-Zarate's claim that counsel was ineffective for failing to advise him of the scope of the waiver. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th

Cir. 2011). Accordingly, we dismiss pursuant to the valid waiver. *See Harris*, 628 F.3d at 1207.

DISMISSED.