

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 22 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JIBRI OMAR WATKINS, AKA Jabri
Knight, AKA Jabri Watkins,

Defendant-Appellant.

No. 16-10491

D.C. No. 4:14-cr-00556-JD-1

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Donato, District Judge, Presiding

Submitted January 17, 2019**
San Francisco, California

Before: WALLACE and FRIEDLAND, Circuit Judges, and ADELMAN,**
District Judge.

Jibri Watkins pleaded guilty to two crimes related to a marijuana grow

* 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).

*** The Honorable Lynn S. Adelman, United States District Judge for the Eastern District of Wisconsin, sitting by designation.

operation in Oakland, pursuant to a plea agreement with the United States. Watkins appeals from his judgment of conviction, arguing that the district court impermissibly participated in plea bargaining. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The only issue on appeal is whether the district court violated Federal Rule of Criminal Procedure 11(c)(1) by holding an *in camera* hearing before Watkins's change of plea. The government argues that we should dismiss Watkins's appeal because his plea agreement waived his right to appeal. But we have held that a Rule 11 violation may be appealed even if the defendant has signed an appellate waiver. *United States v. Myers*, 804 F.3d 1246, 1254 (9th Cir. 2015). We therefore evaluate Watkins's appeal on the merits. We apply plain error review because Watkins did not object contemporaneously, afterwards, or at sentencing. *See id.* at 1257.

Under plain error review, Watkins has not demonstrated prejudice. Watkins brought this appeal to challenge his sentence as a career offender, arguing that *Mathis v. United States*, 136 S. Ct. 2243 (2016), requires us to conclude that one of his predicate offenses is no longer a qualifying offense. But, after all briefing in this appeal was completed, we decided *United States v. Murillo-Alvarado*, which forecloses Watkins's argument. 876 F.3d 1022, 1027 (9th Cir. 2017) ("In light of how it is interpreted by California courts, we hold that section 11351—like section

11352—is divisible as to its controlled substance requirement”). Watkins’s purpose in appealing is therefore no longer available, and Watkins does not argue that he was prejudiced in any other way.

AFFIRMED.