

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 10 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-30092

Plaintiff-Appellee,

D.C. No. 3:08-cr-00092-JWS-1

v.

MEMORANDUM\*

GERALD EDWARDS,

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Alaska

John W. Sedwick, District Judge, Presiding

Submitted March 3, 2020\*\*

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

Gerald Edwards appeals pro se from the district court's order denying his "Motion to Stop Collection of Restitution." We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

As an initial matter, we decline to enforce the appeal waiver in Edwards's

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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).

plea agreement, as the government urges, because the waiver does not clearly apply to an appeal of the restitution order. *See United States v. Charles*, 581 F.3d 927, 931 (9th Cir. 2009).

Edwards argues that the district court erred by failing to order the government to stop collecting against his 2009 restitution judgment. Edwards did not challenge the validity of his restitution order on direct appeal. Even assuming he could challenge it now, we conclude that he is not entitled to relief because he has not shown that collection of restitution, in the amount to which he stipulated at sentencing, would result in “a complete miscarriage of justice.” *United States v. Gianelli*, 543 F.3d 1178, 1184-85 (9th Cir. 2008).

We do not reach Edwards’s remaining arguments because they were not specifically and distinctly raised and argued in the district court or his opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

This disposition is without prejudice to Edwards moving in the district court, pursuant to 18 U.S.C. § 3664(k), for an adjustment to the restitution payment schedule based on a material change in his economic circumstance.

Edwards’s motion to file a late reply brief is granted. The Clerk will file the reply brief received at Docket Entry No. 28.

**AFFIRMED.**