

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 11 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-30217

Plaintiff-Appellee,

D.C. No. 2:18-cr-00214-JLR-1

v.

PRADYUMNA KUMAR SAMAL,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Submitted June 2, 2020**

Before: LEAVY, PAEZ, and BENNETT, Circuit Judges.

Pradyumna Kumar Samal appeals from the district court's judgment and challenges the 87-month sentence imposed following his guilty-plea conviction for mail fraud, in violation of 18 U.S.C. § 1341, and failure to pay or collect taxes, in

* 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).

violation of 26 U.S.C. § 7202. We have jurisdiction under 28 U.S.C. § 1291, and we dismiss.

Samal contends that he was denied effective assistance of counsel at sentencing when counsel failed to object to probation's criminal history calculation. We agree with the government that Samal's claim is barred by the appeal waiver in the parties' plea agreement in which Samal gave up his right to pursue a direct appeal of his sentence. *See United States v. Nunez*, 223 F.3d 956, 959 (9th Cir. 2000) (“[O]ne waives the right to argue ineffective assistance of counsel at sentencing on direct appeal when one waives the right to appeal the sentence.”). As the language of the appeal waiver contemplates, any claim of ineffective assistance of counsel may be raised in a 28 U.S.C. § 2255 motion. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003).

DISMISSED.