

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 12 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GABRIEL AGUILAR GONZALEZ,

Defendant-Appellant.

No. 20-30271

D.C. No. 2:20-cr-00021-TOR-1

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Submitted November 8, 2021**

Before: CANBY, TASHIMA, and MILLER, Circuit Judges.

Gabriel Aguilar Gonzalez appeals from the district court's judgment and challenges the 120-month sentence imposed following his guilty-plea conviction for conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841, 846. We dismiss.

* 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).

Aguilar Gonzalez contends that his sentence is substantively unreasonable. The government asserts that this claim is encompassed by the appeal waiver in the parties' plea agreement. We agree. Aguilar Gonzalez nevertheless maintains that the waiver does not bar his challenge to his sentence because the district court failed to reiterate all of the waiver's terms at the sentencing hearing. However, Federal Rule of Criminal Procedure 11(b)(1)(N) requires that this advisement occur at the change of plea hearing, as it did here. The district court has no similar obligation at sentencing. While a statement by the court at sentencing that "unequivocally, clearly, and without qualification" conveys that the defendant has a right to appeal is sufficient to vitiate the waiver, *United States v. Arias-Espinosa*, 704 F.3d 616, 620 (9th Cir. 2012), the court did not make such a statement here. To the contrary, it reminded Aguilar Gonzalez that he had waived his right to appeal. Accordingly, we enforce the waiver and dismiss Aguilar Gonzalez's appeal.

DISMISSED.