

AUG 23 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

TERRY MICHAEL CROFF,

Defendant-Appellant.

No. 15-30247

D.C. No. 4:15-cr-00011-BMM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Brian M. Morris, District Judge, Presiding

Submitted August 16, 2016**

Before: O'SCANNLAIN, LEAVY, and CLIFTON, Circuit Judges.

Terry Michael Croff appeals from the district court's judgment and challenges his guilty-plea conviction and 132-month sentence for conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. § 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm, but remand to correct

* 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 judgment.

Croff contends that he received ineffective assistance of counsel because counsel failed to secure a more favorable plea agreement from the government and failed to make a number of arguments during the sentencing hearing. Contrary to Croff's contention, the record does not permit us to consider this claim on direct appeal. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011) (this court reviews ineffective assistance claims on direct appeal only where the record is sufficiently developed or inadequate representation is obvious).

We remand to the district court with instructions that it correct the judgment to reflect that Croff was convicted of violating 21 U.S.C. § 846, rather than 18 U.S.C. § 846 as currently stated in the judgment. *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to correct the judgment).

AFFIRMED; REMANDED to correct the judgment.