

MAR 12 2012

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NOT FOR PUBLICATION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.

EFRAIN RODRIGUEZ,

Defendant - Appellant.

No. 10-10593

D.C. No. 5:08-cr-00925-JW

MEMORANDUM*

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

Submitted March 6, 2012**

Before: B. FLETCHER, REINHARDT, and TASHIMA, Circuit Judges.

Efrain Rodriguez appeals from the 78-month sentence imposed following his guilty-plea conviction for possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii).

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We dismiss.

Rodriguez contends that he was denied effective assistance of counsel at sentencing when counsel failed to complete his investigation, to submit a sentencing memorandum, or to adequately prepare for the sentencing hearing. We are precluded from reaching the merits of Rodriguez's claim by a valid appeal waiver in which Rodriguez 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.”).

In any event, the record is insufficiently developed and Rodriguez's legal representation was not so inadequate that it can be concluded at this point that he obviously was denied his Sixth Amendment right to counsel. *See United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003) (“Claims of ineffective assistance of counsel are generally inappropriate on direct appeal.”).

DISMISSED.