

MAY 18 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NOT FOR PUBLICATION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.

EDDIE RAY HALL,

Defendant - Appellant.

No. 11-30105

D.C. No. 2:09-cr-00116-RHW

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Robert H. Whaley, District Judge, Presiding

Submitted May 15, 2012 **

Before: CANBY, GRABER, and M. SMITH, Circuit Judges.

Eddie Ray Hall appeals from his guilty-plea conviction and 195-month sentence for distribution of methamphetamine, in violation of 21 U.S.C.

§ 841(a)(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Hall contends that the district court's advisement that Hall retained the right

* 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).

to appeal any sentence of more than 15 years was inconsistent with the terms of the appeal waiver in his plea agreement, rendering his guilty plea involuntary and unknowing in violation of Federal Rule of Criminal Procedure 11(b). He seeks reversal of his conviction, vacation of his sentence, and remand for rehearing on the plea agreement. While a district court's oral advisement regarding appeal rights can supersede the terms of a written appeal waiver, the remedy for such a misstatement is not vacation of the conviction and sentence, but non-enforcement of the appeal waiver. *See United States v. Buchanan*, 59 F.3d 914, 917-18 (9th Cir. 1995). We need not decide whether the district court expanded Hall's right to appeal through its statements at his change-of-plea hearing because Hall raises no challenge to his conviction or sentence apart from the alleged infirmities in the district court's advisements regarding the appeal waiver.

AFFIRMED.