

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 23 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-10434

Plaintiff-Appellee,

D.C. No. 2:17-cr-00077-JAM-1

v.

MEMORANDUM*

MARTIN GASCA ROJAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted May 21, 2019**

Before: THOMAS, Chief Judge, FRIEDLAND and BENNETT, Circuit Judges.

Martin Gasca Rojas appeals from the district court's judgment and challenges the 151-month sentence imposed following his guilty-plea conviction for three counts of 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.

* 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).

Gasca Rojas contends that the district court procedurally erred by failing to recognize its discretion to vary below the Sentencing Guidelines on policy grounds, and by failing to explain its rejection of his request for a downward variance. Contrary to the government's waiver argument, we review both claims for plain error, *see United States v. Depue*, 912 F.3d 1227, 1232 (9th Cir. 2019) (en banc), and conclude that there is none. The record reflects the district court recognized its discretion but declined to exercise it. *See United States v. Henderson*, 649 F.3d 955, 964 (9th Cir. 2011). Moreover, the district court sufficiently explained the within-Guidelines sentence. *See Rita v. United States*, 551 U.S. 338, 358-59 (2007).

AFFIRMED.