

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 22 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 20-10227

Plaintiff-Appellee,

D.C. No. 4:19-cr-00045-PJH-1

v.

MEMORANDUM*

LINDA NGUYEN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Submitted December 14, 2021**

Before: WALLACE, CLIFTON, and HURWITZ, Circuit Judges.

Linda Nguyen appeals from the district court's judgment and challenges the 24-month sentence imposed following her guilty-plea conviction for conspiracy to commit mail fraud in violation of 18 U.S.C. §§ 1341 and 1349. 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).

Nguyen contends that she was denied effective assistance of counsel at sentencing.¹ As the government concedes, this claim is not barred by the appeal waiver in the parties' plea agreement because Nguyen expressly reserved the right to claim that counsel was ineffective. However, we decline to review Nguyen's claim on direct appeal because the record is not sufficiently developed to permit review of the claim, nor is it clear that defense counsel's performance was inadequate based on the current record. *See United States v. Rahman*, 642 F.3d 1257, 1259-60 (9th Cir. 2011). Contrary to Nguyen's argument, these circumstances do not support remand for additional fact-finding; instead, Nguyen may raise her ineffective assistance of counsel claim in collateral proceedings. *See id.* at 1260.

Nguyen's unopposed motion to file Volume II of the Further Excerpts of Record under seal is granted. The Clerk will file publicly the motion at Docket Entry No. 37-1 and the declaration at Docket Entry No. 37-2, and will file under seal Volume II of the Further Excerpts of Record at Docket Entry No. 37-3.

AFFIRMED.

¹ Although Nguyen's opening brief suggested that she was raising additional claims, she clarified in her reply brief that her sole claim on appeal is that counsel was ineffective. The additional arguments, she explained, were offered solely to prove prejudice from the alleged ineffective assistance.