

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-10304

Plaintiff-Appellee,

D.C. No. 1:19-cr-00157-JMS-2

v.

MEMORANDUM*

LISIATE FAINGA, AKA C,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Hawaii
J. Michael Seabright, District Judge, Presiding

Submitted November 15, 2022**

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Lisiate Fainga appeals from the district court's judgment and challenges the 168-month sentence imposed following his guilty-plea convictions for conspiracy to distribute and possess with intent to distribute methamphetamine and cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)-(B), and 846, and aiding and

* 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).

abetting the possession of methamphetamine and cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)-(B), and 18 U.S.C. § 2. We dismiss.

Fainga contends that the district court erroneously applied a four-level aggravating role adjustment under U.S.S.G. § 3B1.1(a). The government asserts that this claim is encompassed by the appeal waiver in the parties' plea agreement. We agree. Fainga waived the right to challenge his sentence, and the manner in which it was determined, as long as it did not exceed the Guidelines range calculated by the district court. Because he received a sentence below that range, the waiver bars this appeal. *See United States v. Medina-Carrasco*, 815 F.3d 457, 462 (9th Cir. 2015).

Fainga's assertion that he can nevertheless appeal because his sentence is illegal is unavailing. *See United States v. Bibler*, 495 F.3d 621, 624 (9th Cir. 2007) (defining the illegal sentence exception to include only a sentence that is unconstitutional or that exceeds the statutory maximum for the offense). Moreover, even assuming there is a miscarriage of justice exception to the enforcement of an appellate waiver, enforcing the waiver in this appeal of Fainga's below-Guidelines sentence does not result in a miscarriage of justice.

DISMISSED.