

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 12 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 22-10013

Plaintiff-Appellee,

D.C. No.

v.

2:16-cr-00002-KJM-1

CRAIG MASON,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Kimberly J. Mueller, Chief District Judge, Presiding

Submitted November 15, 2022**
San Francisco, California

Before: S.R. THOMAS and BENNETT, Circuit Judges, and LASNIK,*** District
Judge.

* 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).

*** The Honorable Robert S. Lasnik, United States District Judge for the
Western District of Washington, sitting by designation.

Appellant Craig Mason challenges his conviction for unlawfully manufacturing and dealing in firearms without a license in violation of 18 U.S.C. § 922(a)(1)(A). He argues that the district court erred by denying his motion to dismiss the indictment and by denying a subsequent motion to withdraw his guilty plea. For the first time on appeal, he also argues that the indictment was insufficient to allege a violation of § 922(a)(1)(A). We have jurisdiction under 28 U.S.C. § 1291, and we dismiss the appeal because Mason knowingly and voluntarily waived his right to appeal these issues.

Mason pled guilty to unlawfully manufacturing and dealing in firearms without a license in 2019. The plea agreement specifically provided that Mason waived his right to appeal “all constitutional and/or legal challenges to the defendant’s conviction and guilty plea, including arguments that the statutes to which defendant is pleading guilty are unconstitutional. . . . The defendant specifically gives up the right to appeal any issue raised in his . . . Motion to Dismiss.”

After entering his plea, but before sentencing, Mason claimed he had just become aware of the district court decision in *United States v. Jimenez*, 191 F. Supp. 3d 1038 (N.D. Cal. 2016), holding that § 922 is unconstitutionally vague as applied to certain conduct, *id.* at 1045, and a 2016 letter from then-Attorney General Loretta Lynch to Congress (“Lynch Letter”) explaining the government’s

decision not to appeal the *Jimenez* decision.¹ Mason moved to withdraw his guilty plea, arguing that the defendant’s successful vagueness challenge in *Jimenez* applied to his case as well.² The district court denied the motion, holding that the *Jimenez* decision and Lynch Letter are non-binding legal developments, which do not constitute “fair and just reason[s]” for withdrawing a plea. Fed. R. Crim. P. 11(d)(2)(B); *United States v. Ensminger*, 567 F.3d 587, 592 (9th Cir. 2009).

This court reviews enforceability of appellate waivers de novo. *United States v. Wells*, 29 F.4th 580, 583 (9th Cir. 2022). “A defendant’s waiver of his appellate rights is enforceable if the language of the waiver encompasses his right to appeal on the grounds raised, and if the waiver was knowingly and voluntarily made.” *United States v. Joyce*, 357 F.3d 921, 922 (9th Cir. 2004). “[W]e will not exercise . . . jurisdiction to review the merits of [a defendant’s] appeal if we conclude that she knowingly and voluntarily waived her right to appeal unless the result would work a miscarriage of justice.” *United States v. Jacobo Castillo*, 496 F.3d 947, 957 (9th Cir. 2007) (en banc) (quoting *United States v. Gwinnett*, 483

¹ 28 U.S.C. § 530D(a)(1)(B)(ii) requires the Attorney General to submit a report to Congress explaining any decision “not to appeal . . . any judicial . . . determination adversely affecting the constitutionality” of federal statutes or regulations.

² Mason also cited developments in other district court cases, but they are irrelevant here because they occurred after Mason pled guilty.

F.3d 200, 203 (3d Cir. 2007)).

Here, there is no dispute that Mason’s appellate waiver covers the grounds of his appeal because his claims are all legal challenges to his plea or conviction. Instead, Mason argues for the first time on appeal that his appellate waiver was unknowing and involuntary because the government “withheld” the *Jimenez* decision and Lynch Letter during plea negotiations. But the *Jimenez* decision was published in June 2016 and the Lynch Letter is dated September 8, 2016,³ more than two years before Mason signed his plea agreement in March 2019.

Mason provides no authority holding that the government has a duty to disclose publicly available information during plea bargaining. But even if such a duty exists, it was not violated here because the *Jimenez* decision and Lynch Letter are immaterial. Those materials provide that § 922 is ambiguous with respect to defendants that possess AR-15 lower receivers.⁴ *Jimenez*, 191 F.Supp.3d at 1040–45. Here, Mason was charged in part with manufacturing and selling completed and fully functional AR-15 style firearms. Thus, the vagueness analysis in *Jimenez*

³ Mason concedes that the Lynch Letter was publicly available on the Department of Justice website as early as April 2017. Although he contends that it was hard to find, he cites no authority suggesting that the difficulty of finding a resource online is relevant to our analysis.

⁴ AR-15 style firearms require both a “lower” and “upper” receiver to operate. *Jimenez*, 191 F.Supp.3d at 1039. *Jimenez* and the Lynch Letter discuss ambiguity as to whether a lower receiver alone constitutes a “firearm” under § 922. *Id.* at 1040–45.

and the Lynch Letter is inapposite.

Because the “language of [Mason’s] waiver encompasses his right to appeal on the grounds raised, and [his] waiver was knowingly and voluntarily made,” we enforce the waiver and decline to exercise jurisdiction over the merits of Mason’s appeal. *Joyce*, 357 F.3d at 922; *Jacobo Castillo*, 496 F.3d at 957.

DISMISSED.⁵

⁵ The motion to take judicial notice, Dkt. 15, is **GRANTED**.