

JUL 03 2008

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NOT FOR PUBLICATION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.

WILLIAM JEROME RIZZO,

Defendant - Appellant.

No. 07-10132

D.C. No. CR-05-00350-JCM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted June 18, 2008**

Before: REINHARDT, LEAVY, and CLIFTON, Circuit Judges.

William Jerome Rizzo appeals from his guilty-plea conviction and 97-month sentence for conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B) and 846, distribution of methamphetamine, in violation of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

21 U.S.C. § 841(a)(1), (b)(1)(C), and distribution of methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B). We dismiss the appeal.

Rizzo contends that the appeal waiver in his plea agreement is unenforceable because his guilty plea was not knowingly and voluntarily entered into due to ineffective assistance of counsel. Because the record is insufficiently developed, we decline to consider this claim on direct appeal. *See United States v. Jeronimo*, 398 F.3d 1149, 1155-56 (9th Cir. 2005). Our ruling does not limit Rizzo's ability to pursue a claim of ineffective assistance of counsel on habeas review, where such claims are generally addressed.

Rizzo also contends that this appeal is not barred because the district court informed him at sentencing that certain appellate rights could not be waived and advised him of the steps necessary to initiate an appeal. However, the district court's statements did not invalidate the waiver of appeal. *See United States v. Aguilar-Muniz*, 156 F.3d 974, 977 (9th Cir. 1998).

Accordingly, we dismiss the appeal in light of the valid appeal waiver. *See United States v. Nguyen*, 235 F.3d 1179, 1182 (9th Cir. 2000).

DISMISSED.