

MAR 19 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CAMILO CORTEZ,

Defendant - Appellant.

No. 06-50545

D.C. No. CR-06-00284-SJO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted February 26, 2008**

Before: BEEZER, FERNANDEZ, and McKEOWN, Circuit Judges

Camilo Cortez appeals the 151-month sentence imposed following his guilty plea to possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and possession of heroin with intent to distribute in violation of 21 U.S.C. § 841(a)(1). He

* 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).

contends that in sentencing him as a career offender under U.S.S.G. § 4B1.1, the district court failed sufficiently to consider the factors set forth in 18 U.S.C. § 3553(a) and failed to impose a sentence that was sufficient, but not greater than necessary, in light of the nature of his prior convictions. We dismiss the appeal.

In his plea agreement, Cortez waived the right to appeal his sentence but retained the right to appeal “the court’s determination of [his] criminal history category.” The district court placed Cortez in criminal history category V. It found that he was a career offender, which raised his criminal history category to VI under U.S.S.G. § 4B1.1(b).

Cortez does not challenge the determination of his criminal history category, but rather argues that the district court should have imposed a sentence outside the Guidelines. This argument falls within the appeal waiver. *See United States v. Speelman*, 431 F.3d 1226, 1229 (9th Cir. 2005).

DISMISSED.