

MAR 05 2009

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NOT FOR PUBLICATION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.

ZONG GUO LI,

Defendant - Appellant.

No. 08-10347

D.C. No. CR-07-00029-ARM

MEMORANDUM*

Appeal from the United States District Court
for the District of the Northern Mariana Islands
Alex R. Munson, District Judge, Presiding

Submitted February 18, 2009**

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Zong Guo Li appeals from the 24-month sentence imposed following his guilty-plea conviction for distribution of a controlled substance near a school, in

* 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).

violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C), and 860(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

The government contends that an appeal waiver in the plea agreement bars this appeal. However, because the relevant provisions in the appeal waiver in the plea agreement are ambiguous, we do not enforce them. *See United States v. Speelman*, 431 F.3d 1226, 1229-31 (9th Cir. 2005); *cf. United States v. Jeronimo*, 398 F.3d 1149, 1153 (9th Cir. 2005).

Li contends that his sentence is unreasonable in light of *Kimbrough v. United States*, 128 S. Ct. 558 (2007), because the district court did not take into account the disparate treatment under the Sentencing Guidelines of offenses involving “ice” versus regular methamphetamine. The record discloses that the district court considered the relevant 18 U.S.C. § 3553(a) factors and imposed a sentence at the low end of the applicable Guidelines range. The district court did not abuse its discretion in declining to impose a lower sentence based upon the disparity. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). In light of the totality of the circumstances, we conclude that the sentence is reasonable. *See id.*

AFFIRMED.