

FEB 26 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NOT FOR PUBLICATION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.

MARIO ALEXANDER BOCONOVICK-  
URBINA,

Defendant - Appellant.

No. 08-10196

D.C. No. 4:07-cr-01656-CKJ

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Cindy K. Jorgenson, District Judge, Presiding

Submitted February 18, 2009\*\*

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

Mario Alexander Boconovick-Urbina appeals from the 135-month sentence imposed following his guilty-plea conviction for possession with intent to

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\* 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).

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

Boconovick-Urbina contends that the district court violated the Sixth Amendment when it increased his sentencing range based on facts that were neither admitted by him nor proven to a jury. This contention fails because Boconovick-Urbina was sentenced well below the statutory maximum. *See United States v. Dare*, 425 F.3d 634, 640-41 (9th Cir. 2005).

Boconovick-Urbina also contends for the first time in his reply brief that his sentence is unreasonable. We decline to address this contention. *See United States v. Puerta*, 982 F.2d 1297, 1300 n.1 (9th Cir. 1992).

**AFFIRMED.**