

MAY 26 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>MERVIN McPHERSON SOARES,</p> <p>Defendant - Appellant.</p>

No. 08-50284

D.C. No. 8:04-cr-00301-CJC-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted May 12, 2009**

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Mervin McPherson Soares appeals from the 120-month sentence imposed following his guilty-plea conviction for conspiracy to distribute marijuana, 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. § 846, engaging in monetary transactions, and aiding and abetting, in violation of 18 U.S.C. §§ 1957(a) and 2. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Soares contends that the district court violated Rule 32 of the Federal Rules of Criminal Procedure by failing to resolve factual disputes and by failing to expressly rule on the application of a leadership role enhancement and his request for safety valve relief. We conclude that there was no Rule 32 violation. *See United States v. Stoterau*, 524 F.3d 988, 1012 (9th Cir. 2008).

Soares also contends that the district court erred by applying a sentencing enhancement for being an organizer or leader pursuant to U.S.S.G. § 3B1.1. We conclude that the district court did not err in applying the enhancement. *See United States v. Rivera*, 527 F.3d 891, 909-10 (9th Cir. 2008). Because the district court did not err in finding that Soares was an organizer of the criminal activity, he is not entitled to safety valve relief. *See* 18 U.S.C. § 3553(f)(4).

AFFIRMED.