

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 01 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GUSTAVO ADOLFO PENUNURI-  
BADILLO,

Defendant - Appellant.

No. 08-10352

D.C. No. 4:07-cr-01705-CKJ

MEMORANDUM\*

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

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Gustavo Adolfo Penunuri-Badillo appeals from the 48-month sentence imposed following his guilty-plea conviction for importing cocaine, in violation of

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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).

21 U.S.C. §§ 952(a), 960(a)(1), (b)(1)(B)(ii), and possessing cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(ii)(II). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Penunuri-Badillo contends that the district court erred when it failed to apply a minimal role adjustment, pursuant to U.S.S.G. § 3B1.2(a), to his offense level calculation. We conclude that the district court did not err. *See United States v. Webster*, 996 F.2d 209, 212 n.5 (9th Cir. 1993); *see also United States v. Lui*, 941 F.2d 844, 849 (9th Cir. 1991).

Penunuri-Badillo also contends that the district court erred when it denied his request for a downward departure based on imperfect duress, pursuant to U.S.S.G. § 5K2.12, and that his sentence is unreasonable. We review both contentions for reasonableness. *See United States v. Dallman*, 533 F.3d 755, 760-61 (9th Cir. 2008); *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). We conclude that the district court did not procedurally err and that the sentence is not substantively unreasonable. *See Carty*, 520 F.3d at 991-93.

**AFFIRMED.**