

APR 19 2010

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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>BERNADETTE GARCIA,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 09-10074

D.C. No. 4:08-CR-00180-CKJ

MEMORANDUM*

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

Submitted April 5, 2010**

Before: RYMER, McKEOWN, and PAEZ, Circuit Judges.

Bernadette Garcia appeals from the 120-month sentence imposed following her guilty-plea conviction for possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Garcia contends that the district court procedurally erred by failing to adequately consider the 18 U.S.C. § 3553(a) sentencing factors, her request to disregard the career offender guideline, and her arguments in mitigation. The record reflects that the district court considered the § 3553(a) factors, but found the circumstances insufficient to justify disregarding the career offender guideline. Furthermore, the district court acknowledged Garcia's mitigation arguments by granting a three-level downward departure and imposing a sentence at the bottom of the revised range. Thus, the district court did not procedurally err and the sentence is substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007); *see also United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

AFFIRMED.