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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NOT FOR PUBLICATION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.