

OCT 12 2010

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NOT FOR PUBLICATION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.

RAYMUNDO OCTAVIO RODRIGUEZ-
AGUIRRE,

Defendant - Appellant.

No. 09-50492

D.C. No. 3:09-cr-01606

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted September 13, 2010 **

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Raymundo Octavio Rodriguez-Aguirre appeals the 70-month sentence imposed following his guilty-plea conviction for importation of 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 concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violation 21 U.S.C. §§ 952 and 960. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Rodriguez-Aguirre contends the district court erred by denying him a minor role adjustment under U.S.S.G. § 3B1.2(b). We conclude that the district court did not clearly err by ruling that Rodriguez-Aguirre failed to carry his burden of proving that he was substantially less culpable than the average participant. *See United States v. Awad*, 371 F.3d 583, 591 (9th Cir. 2004); *United States v. Hursh*, 217 F.3d 761, 770 (9th Cir. 2000).

Rodriguez-Aguirre contends the district court failed to consider the role of others in the offense. The record reveals that the district court properly compared Rodriguez-Aguirre to the average participant in the case. *See* U.S.S.G. § 3B1.2 cmt n.3(A); *Awad*, 371 F.3d at 591.

Rodriguez-Aguirre also contends that the district court was required to point to articulate facts showing managerial culpability. That contention lacks merit. *See Awad*, 371 F.3d at 591 (“The defendant bears the burden of proving that he is entitled to a downward adjustment based on his role in the offense.”).

AFFIRMED.