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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NOT FOR PUBLICATION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>RAFAEL VEA-MARTINEZ,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 10-10049

D.C. No. 4:08-cr-01522-CKJ

MEMORANDUM*

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

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Rafael Vea-Martinez appeals from the 97-month sentence imposed following his guilty-plea conviction for possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(viii), and

* 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).

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

Vea-Martinez contends the district court erred by applying the wrong standard when evaluating whether he should receive a minor role adjustment under the Sentencing Guidelines. He maintains that as a result of this error, the district court imposed a substantively unreasonable sentence. The record reflects that the district court applied the correct standard in denying the adjustment, and that it did not clearly err by determining that Vea-Martinez did not sustain his burden of showing that he was substantially less culpable than his co-participants. *See United States v. Cantrell*, 433 F.3d 1269, 1282-84 (9th Cir. 2006). The record further indicates that, under the totality of the circumstances, Vea-Martinez's below-Guidelines sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

AFFIRMED.