

FEB 23 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GARY ANTHONY VALENTINE,

Defendant - Appellant.

No. 10-50279

D.C. No. 3:09-cr-03489-JLS

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Janis L. Sammartino, District Judge, Presiding

Submitted February 15, 2011\*\*

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Gary Anthony Valentine appeals from the 46-month sentence imposed following his guilty-plea conviction for importation of marijuana and aiding and abetting, in violation of 21 U.S.C. §§ 952 and 960 and 18 U.S.C. § 2. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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

Valentine contends that the district court erred in determining that the government's substantial assistance motion under 18 U.S.C. § 3553(e) permitted it to consider only factors related to substantial assistance, and not the factors set forth in 18 U.S.C. § 3553(a), in determining the extent of the downward departure. This contention is foreclosed by *United States v. Jackson*, 577 F.3d 1032, 1036 (9th Cir. 2009).

Valentine also contends that his sentence was substantively unreasonable in light of the section 3553(a) factors. Because the district court could not reduce Valentine's sentence on the basis of those factors, this contention fails. *See id.*

**AFFIRMED.**