

MAR 14 2011

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NOT FOR PUBLICATION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>MAURICIO ALFREDO PENA- MANZANAREZ,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 10-10061

D.C. No. 4:09-cr-01929-DCB-
DTF

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Mauricio Alfredo Pena-Manzanarez appeals from his guilty-plea conviction and 65-month sentence for importation of cocaine, in violation of 21 U.S.C. §§ 952(a), 960(a)(1) and (b)(1)(B)(ii), and possession with intent to distribute cocaine,

* 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).

in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A)(ii)(II). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Pena-Manzanarez contends that the district court erred by denying his request for a minor role adjustment, pursuant to U.S.S.G. § 3B1.2. The district court did not clearly err when it denied the request. *See United States v. Cantrell*, 433 F.3d 1269, 1282 (9th Cir. 2006) (describing standard); *see also United States v. Lui*, 941 F.2d 844, 849 (9th Cir. 1991).

Pena-Manzanarez further contends that the district court erred by refusing to grant an additional one-point downward adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(b), despite the government's decision not to move for the extra point. The district court did not clearly err. The government's decision not to move for the third point was rational and not arbitrary, as the defendant did not waive his right to appeal. *See United States v. Johnson*, 581 F.3d 994, 1002 (9th Cir. 2009), *see also United States v. Medina-Beltran*, 542 F.3d 729, 731 (9th Cir. 2008) (per curiam).

AFFIRMED.