

MAR 16 2011

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NOT FOR PUBLICATION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.

OSWALDO ZUNIGA-SANCHEZ,

Defendant - Appellant.

No. 10-30042

D.C. No. 2:09-cr-00023-DWM

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted March 8, 2011**

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

Oswaldo Zuniga-Sanchez appeals from the 135-month sentence imposed following his guilty plea conviction for conspiracy to distribute methamphetamine, in violation of 21 U.S.C. §§ 841 and 846. We have jurisdiction under 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).

Zuniga-Sanchez contends that the district court erred in imposing a two-level firearm enhancement under U.S.S.G. § 2D1.1(b)(1). The district court did not clearly err in finding that the connection between the handgun and the drug conspiracy was not “clearly improbable.” *See United States v. Lopez-Sandoval*, 146 F.3d 712, 714-16 (9th Cir. 1998).

Zuniga-Sanchez also contends that his sentence was substantively unreasonable. The record reflects that the 135-month sentence at the low-end of the Guidelines range was reasonable in light of the totality of the circumstances. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). The fact that the district court acknowledged that a sentence at the statutory minimum of 120 months would also have been reasonable does not alter this conclusion, as the “parsimony clause” of 18 U.S.C. § 3553(a) functions not as a constraint on appellate review but rather as a directive to the district court in the first instance. *See United States v. Chavez*, 611 F.3d 1006, 1010-11 (9th Cir. 2010) (per curiam).

AFFIRMED.