

APR 11 2011

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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NOT FOR PUBLICATION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>NICHOLAS MYLES GARCIA,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 10-50167

D.C. No. 2:08-cr-01234

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Manuel L. Real, District Judge, Presiding

Submitted April 5, 2011\*\*

Before: B. FLETCHER, CLIFTON, and BEA, Circuit Judges.

Nicholas Myles Garcia appeals from the 51-month sentence imposed following his guilty-plea conviction for conspiracy and subscribing to a false tax return, in violation of 18 U.S.C. § 371 and 26 U.S.C. § 7206(1). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

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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).

Garcia contends that the case must be remanded for resentencing because the district court provided no explanation whatsoever for the sentence imposed. The government concurs in the request, conceding that the district court did not provide an adequate explanation of its sentencing decision. Based on our review of the record, we agree that the district court plainly erred by failing to discuss any of the applicable sentencing factors, explain how it resolved the parties' dispute with respect to the Guidelines calculations, or address Garcia's request for a sentence below the Guidelines range. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc); *see also United States v. Waknine*, 543 F.3d 546, 554-55 (9th Cir. 2008).

In light of the remand, we decline to address the remaining issues raised in Garcia's opening brief.

**SENTENCE VACATED and REMANDED for RESENTENCING.**