

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 08 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID PEREZ-MONTERO,

Defendant - Appellant.

No. 10-50413

D.C. No. 3:10-cr-00380-LAB-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted May 4, 2011**
Pasadena, California

Before: SILVERMAN, TALLMAN, and CLIFTON, Circuit Judges.

David Perez-Montero (“Perez”) appeals the sentence imposed after he pled guilty to importing 6.85 kilograms of methamphetamine in violation of 21 U.S.C. §§ 952, 960, and 963. 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).

Judge Burns' expressed dissatisfaction with the government's practice of offering minor-role adjustments during plea negotiations was not the basis for the sentence imposed. Instead, Judge Burns based his sentencing determination on the substantial amount of drugs involved and on Perez's role in the preparation for the offense. The district court did not clearly err in finding that Perez failed to prove he played only a minor role in the offense, and it did not abuse its discretion in declining to award the minor-role adjustment. *See United States v. Rodriguez-Castro*, — F.3d —, 2011 WL 2150997 (9th Cir. June 2, 2011); *United States v. Cantrell*, 433 F.3d 1269, 1283 (9th Cir. 2006).

Because the government's argument in support of the sentence imposed is not inconsistent with its argument to the district court, estoppel does not apply. *See Rodriguez-Castro*, 2011 WL 2150997 at *3.

AFFIRMED.