

OCT 4 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NOT FOR PUBLICATION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.

MANUEL CHAVEZ, Jr.,

Defendant - Appellant.

No. 10-10366

D.C. No. 2:09-cr-00129-MCE

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, Jr., District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Manuel Chavez, Jr., appeals from the 51-month sentence imposed following his guilty-plea conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). 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).

Chavez contends that the district court either failed to consider or did not understand its discretion to reduce his sentence under U.S.S.G. § 5K2.23, based on the time that he served in state custody due to a parole revocation resulting from the firearm possession at issue in this case. The record reflects that the district court understood that it had discretion to reduce Chavez's sentence and chose not to do so.

Chavez also contends that the district court erred by orally describing two of his prior convictions as felonies rather than misdemeanors. Chavez did not object to the mischaracterization at sentencing. Accordingly, we review for plain error. *See United States v. Waknine*, 543 F.3d 546, 551 (9th Cir. 2008). The error did not alter the Guidelines calculation and Chavez has not demonstrated a reasonable probability that his sentence would have been different but for the error. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008).

AFFIRMED.