

DEC 27 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NOT FOR PUBLICATION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.

BAY IGNACIO MENDIVIL-SILVA,
a.k.a. Bay Ignacio Mendevil-Silva,

Defendant - Appellant.

No. 11-10098

D.C. No. 4:10-cr-00795-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Raner C. Collins, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Bay Ignacio Mendivil-Silva appeals from the 78-month sentence imposed following his guilty-plea conviction for importation of cocaine, in violation of 21 U.S.C. §§ 952(a), 960(a)(1) and 960(b)(1)(A)(ii), and possession with intent to

* 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).

distribute cocaine, 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.

Mendivil-Silva contends that remand is required because the district court did not recognize its discretion to vary from the advisory sentencing Guidelines range pursuant to *Kimbrough v. United States*, 552 U.S. 85 (2007). The record belies that contention. The district court understood that had discretion to vary but concluded that a within-Guidelines sentence was appropriate for Mendivil-Silva.

To the extent that Mendivil-Silva also contends that his sentence was substantively unreasonable, the contention fails. In light of the totality of the circumstances and the sentencing factors set forth in 18 U.S.C. § 3553(a), the 78-month sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.