

JAN 12 2012

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NOT FOR PUBLICATION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.

ADEMIR HERNANDEZ-ARCIGA,

Defendant - Appellant.

No. 10-30321

D.C. No. 3:07-cr-00403

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ancer L. Haggerty, District Judge, Presiding

Submitted December 19, 2011 **

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

Ademir Hernandez-Arciga was convicted of federal drug-related offenses, and he timely appeals his 300-month sentence on the ground that his Fifth and Sixth Amendment rights were violated by a sentence enhancement for a prior

* 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).

conviction under Cal. Health & Safety Code § 11352(a). We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a), and we affirm.

Hernandez-Arciga contends that *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and its progeny require a jury to find that his prior conviction constituted a “felony drug offense” pursuant to the enhancement statute, 21 U.S.C. § 841(b)(1)(A). This argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998). See *United States v. Weiland*, 420 F.3d 1062, 1079 (2005).

To the extent Hernandez-Arciga argues that the evidence was insufficient to establish that his prior conviction constituted a felony drug offense under the enhancement statute, this argument also fails. We review de novo a district court’s conclusion that a prior conviction qualifies for a sentencing enhancement. *United States v. Almazan-Becerra*, 537 F.3d 1094, 1097 (9th Cir. 2008). The district court had sufficient documentation to establish that Hernandez-Arciga’s prior conviction was a felony drug offense. See *Chuen Piu Kwong v. Holder*, __ F.3d __, __, 2011 WL 6061513, at *4–5 (9th Cir. Dec. 7, 2011); *United States v. Snellenberger*, 548 F.3d 699, 701–02 (9th Cir. 2008) (en banc).

AFFIRMED.