

JAN 24 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NOT FOR PUBLICATION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.

PEDRO GARCIA-VARGAS, a.k.a. Ulises
Anaya, a.k.a. Ulysis Anaya,

Defendant - Appellant.

No. 11-30025

D.C. No. 1:09-cr-00101-JDS

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Jack D. Shanstrom, District Judge, Presiding

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

Pedro Garcia-Vargas appeals from the 120-month sentence imposed following his guilty plea to Count One of the Second Superseding Indictment, in

* 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).

violation of 21 U.S.C. §§ 841(a)(1), 843 and 18 U.S.C. § 2. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Contrary to Garcia-Vargas' contention, the district court did not clearly err in finding Garcia-Vargas ineligible for safety valve relief under 18 U.S.C. § 3553(f) where Garcia-Vargas' proffer was inconsistent with the testimony adduced at trial by the law enforcement agent who investigated the crime and the proffer made by his co-defendant. *See United States v. Mejia-Pimental*, 477 F.3d 1100, 1107 (9th Cir. 2007) (where proffer of knowledge and participation is truthful and complete, it suffices for purposes of safety valve relief).

AFFIRMED.