

FEB 22 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NOT FOR PUBLICATION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.

JAVIER OLVERA-YANEZ, a.k.a. Javier
Olivera-Yanez, a.k.a. Nelos Olvera, a.k.a.
Javier Olvera-Yanes, a.k.a. Nelos Vagos,
a.k.a. Javier Yanez-Olvera,

Defendant - Appellant.

No. 10-50481

D.C. No. 2:10-cr-00672-PA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted February 21, 2012**

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

Attorney Nikoo Berenji appeals the district court's imposition of sanctions for appearing late to a hearing. We have jurisdiction under 28 U.S.C. § 1291, and

* 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. Appellant. P. 34(a)(2).

we vacate the imposition of sanctions and remand.

Berenji contends the district abused its discretion when it imposed a \$100 sanction under its inherent powers without a finding of bad faith. We agree that Berenji's single tardy appearance does not justify a monetary sanction in this case. *See Mendez v. County of San Bernardino*, 540 F.3d 1109, 1130-33 (9th Cir. 2008) (vacating sanction order imposed under district court's inherent powers where the court did not make a bad faith finding before imposing sanctions and the record did not support such a finding); *Zambrano v. City of Tustin*, 885 F.2d 1473, 1480 (9th Cir. 1989) (“[C]onduct amounting to recklessness, gross negligence, repeated—although unintentional—flouting of court rules, or willful misconduct” is required before monetary sanctions can be imposed under local rules) (footnotes omitted).

VACATED and REMANDED.