

FEB 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NOT FOR PUBLICATION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.

JESUS RAUL-CRUZ,

Defendant - Appellant.

No. 11-30002

D.C. No. 1:09-cr-00248-EJL

MEMORANDUM*

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR COPADO,

Defendant - Appellant.

No. 11-30037

D.C. No. 1:09-cr-00248-EJL

Appeals from the United States District Court
for the District of Idaho
Edward J. Lodge, District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted February 21, 2012**

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

In these related appeals, Jesus Raul-Cruz and Victor Copado appeal from the respective 87-month and 100-month sentences imposed following their guilty-plea convictions for conspiracy to distribute cocaine and marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction under 28 U.S.C. § 1291. In No. 11-30002, we dismiss in light of a valid appeal waiver. In No. 11-30037, we affirm.

In No. 11-30002, Raul-Cruz's valid appeal waiver bars this appeal challenging the district court's imposition of a sentencing enhancement for possession of a firearm. *See United States v. Joyce*, 357 F.3d 921, 922 (9th Cir. 2004). We decline to consider Raul-Cruz's contention, raised for the first time in his reply brief, that he is entitled to an exception to the waiver. *See United States v. Rearden*, 349 F.3d 608, 614 n.2 (9th Cir. 2003).

In No. 11-30037, Copado contends that the district court erred by imposing a two-level enhancement under U.S.S.G. § 2D1.1(b)(1) for possession of a firearm. This contention fails because the district court adequately found that the possession

** The panel unanimously concludes this case is suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

of firearms by co-conspirators was reasonably foreseeable to Copado, *see United States v. Benford*, 574 F.3d 1228, 1234 (9th Cir. 2009), and this finding was not clearly erroneous in light of the nature of the conspiracy and the ample evidence of firearm possession. *See United States v. Garcia*, 909 F.2d 1346, 1349-50 (9th Cir. 1990).

No. 11-30002: DISMISSED.

No. 11-30037: AFFIRMED.