

APR 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE BENJAMIN HERNANDEZ,

Defendant - Appellant.

No. 10-10501

D.C. No. 2:09-cr-01114-GMS-2

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
G. Murray Snow, District Judge, Presiding

Submitted April 19, 2012\*\*  
San Francisco, California

Before: SCHROEDER, THOMAS, and GRABER, Circuit Judges.

Defendant Jose Benjamin Hernandez appeals the district court's imposition of a sentence of 235 months' imprisonment following his guilty plea to conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

§§ 841 and 846, and to possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841. We affirm.

1. The district court did not clearly err by finding that it was "reasonably foreseeable" that Defendant's co-conspirator would possess a firearm under U.S.S.G. §§ 1B1.3(a)(1)(B), 2D1.1(b)(1). See United States v. Ortiz, 362 F.3d 1274, 1275 (9th Cir. 2004) (explaining the findings that a district court must make). The sentencing transcript makes clear that the district court found that, whether Defendant or the government had the burden of proof, the evidence overwhelmingly supported a finding of reasonable foreseeability. We agree.

2. The district court did not otherwise err at sentencing. See generally United States v. Carty, 520 F.3d 984, 992 (9th Cir. 2008) (en banc). The district court adequately considered the factors under 18 U.S.C. § 3553, and its imposition of a sentence at the low end of the Guidelines range was reasonable.

**AFFIRMED.**