

MAY 21 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NOT FOR PUBLICATION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.

DANIEL JOSEPH SALAZAR,

Defendant - Appellant.

No. 11-50106

D.C. No. 3:10-cr-03984-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted May 15, 2012**

Before: CANBY, GRABER, and M. SMITH, Circuit Judges.

Daniel Joseph Salazar appeals from the 46-month sentence imposed following his guilty-plea conviction for importation of cocaine, in violation of 21 U.S.C. §§ 952 and 960. We have jurisdiction under 28 U.S.C. § 1291, and we

* 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).

affirm.

Salazar contends that the district court procedurally erred by failing to appreciate its discretion under *Kimbrough v. United States*, 552 U.S. 85 (2007), to deviate from the advisory sentencing Guidelines based on policy differences with the Guidelines. The record reflects that the district court was aware of its discretion to deviate from the Guidelines, but chose not to do so. *See United States v. Henderson*, 649 F.3d 955, 964 (9th Cir. 2011) (“[D]istrict courts are not obligated to vary from the . . . Guidelines on policy grounds if they do not have, in fact, a policy disagreement with them.”).

AFFIRMED.