

JUL 11 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NOT FOR PUBLICATION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.

BRIAN LEE DOWNS,

Defendant - Appellant.

No. 11-50313

D.C. No. 3:10-cr-03981-WQH-1

MEMORANDUM*

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

Argued and Submitted May 10, 2012
Pasadena, California

Before: WARDLAW, PAEZ, and RAWLINSON, Circuit Judges.

Brian Lee Downs challenges the district court's denial of his motion for a new trial and the imposition of a 32-month sentence of imprisonment. We have jurisdiction under 28 U.S.C. § 1291 and affirm the district court's rulings.

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

The district court did not abuse its discretion when it denied Downs's motion for a new trial. Downs failed to explain why the filing of a criminal complaint against Hugo Terry served to identify Terry as the third party that allegedly deceived Downs into transporting marijuana. Without explaining this link, Downs failed to establish the existence of newly discovered evidence that is material. *See United States v. Hinkson*, 585 F.3d 1247, 1264 (9th Cir. 2009) (en banc) (citing *United States v. Harrington*, 410 F.3d 598, 601 (9th Cir. 2005)) (discussing the factors to be considered by the district court).

Nor did the district court abuse its discretion when it sentenced Downs. The district court imposed a sentence below the recommended guideline range, and carefully articulated legitimate reasons for not imposing an even lower sentence. The sentence was substantively reasonable. *See United States v. Ressam*, No. 09-30000, -- F.3d --, 2012 WL 1561001, at *19 (9th Cir. May 4, 2012) (en banc) (explaining that a sentence is reasonable if the record, viewed in its totality, "reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a)") (citation omitted).

AFFIRMED.