

SEP 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>MARTIN ADOLFO PALAFOX-CARDENAS,</p> <p>Defendant - Appellant.</p>
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No. 11-10133

D.C. No. 2:10-cr-00157-SMM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Stephen M. McNamee, District Judge, Presiding

Submitted September 10, 2012\*\*

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Martin Adolfo Palafox-Cardenas appeals from the 144-month sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841

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\* 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).

(b)(1)(A)(viii), and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Palafox-Cardenas contends that the district court applied the wrong standard in considering his request for a minor role adjustment under U.S.S.G. § 3B1.2(b), and clearly erred in denying the adjustment. The record belies the contention that the court applied the wrong legal standard in considering the adjustment. Because Palafox-Cardenas failed to prove that he was “substantially less culpable than the average participant” in the conspiracy, the court did not err in denying the adjustment. *See* U.S.S.G. § 3B1.2 cmt. n.3(A); *United States v. Rodriguez-Castro*, 641 F.3d 1189, 1193 (9th Cir. 2011).

Palafox-Cardenas also contends that the district court procedurally erred by failing to consider all of the 18 U.S.C. § 3553(a) sentencing factors and by failing to explain adequately the sentence imposed in light of his mitigating arguments. The district court expressly considered the section 3553(a) factors and adequately explained the sentence.

Finally, Palafox-Cardenas contends that his sentence is substantively unreasonable. Under the totality of the circumstances and the section 3553(a) sentencing factors, the sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

**AFFIRMED.**