

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 24 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TONI MACIEL,

Defendant - Appellant.

No. 12-50035

D.C. No. 3:11-cr-03130-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted September 10, 2012**

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

Toni Maciel appeals from the 60-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 affirm.

* 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).

Maciel contends that the district court erred by denying a minor role adjustment under U.S.S.G. § 3B1.2(b). This argument is without merit. Contrary to Maciel's contention, the district court did not state that first-time courier drivers could never qualify for a minor role adjustment, and the court did not err in denying the adjustment here. *See United States v. Rodriguez-Castro*, 641 F.3d 1189, 1193 (9th Cir. 2011).

AFFIRMED.