

DEC 19 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NOT FOR PUBLICATION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.

MARCO ANTONIO CHAVEZ, etc.

Defendant - Appellant.

No. 11-50258

D.C. No. 8:10-CR-00033-AG-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andrew J. Guilford, District Judge, Presiding

Argued and Submitted November 8, 2012
Pasadena, California

Before: REINHARDT and THOMAS, Circuit Judges, and NAVARRO,**
District Judge.

Marco Antonio Chavez appeals the sentence imposed by the district court following Chavez’s guilty plea to conspiracy to possess with the intent to distribute approximately 493.3 grams of pure methamphetamine in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A). The district court sentenced Chavez to eighty-seven

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

** The Honorable Gloria M. Navarro, United States District Judge for the District of Nevada, sitting by designation.

months, to be followed by a five-year term of supervised release. This sentence included a two-level enhancement for possession of a dangerous weapon during the commission of the offense.

We review the district court's sentencing decision for abuse of discretion. *United States v. Armstead*, 552 F.3d 769, 776 (9th Cir. 2008). We review the district court's underlying factual findings for clear error. *Id.* Based on the parties' arguments and the Court's examination of the record, we conclude that Chavez should have reasonably foreseen that his co-conspirators would possess a firearm during the execution of such a major drug transaction. *United States v. Garcia*, 909 F.2d 1346, 1350 (9th Cir. 1990). Therefore, the district court did not clearly err in determining that the two-level sentencing enhancement for possession of a dangerous weapon was appropriate. *Id.*

AFFIRMED.