

FEB 13 2013

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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NOT FOR PUBLICATION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.

JEFFREY EUGENE CONNER,

Defendant - Appellant.

No. 12-10073

D.C. No. 2:10-cr-00036-GEB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Garland E. Burrell, Jr., District Judge, Presiding

Submitted February 11, 2013**

Before: FERNANDEZ, TASHIMA, and WARDLAW, Circuit Judges.

Jeffrey Eugene Conner appeals from the district court’s judgment and challenges the 92-month sentence imposed following his guilty-plea conviction for distribution of cocaine base, in violation of 21 U.S.C. § 841(a)(1). We have

* 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).

jurisdiction under 28 U.S.C. § 1291, and we affirm.

Conner contends that the district court procedurally erred by failing to consider or explain why it rejected his argument that the court should apply a 1:1 crack-to-powder cocaine ratio and impose the mandatory minimum sentence. Because Conner failed to object on this basis in the district court, we review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. The record reflects that the court was aware of Conner's arguments and understood its discretion to vary from the advisory Guidelines on policy grounds, but declined to do so in light of the 18 U.S.C. § 3553(a) sentencing factors. The court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

AFFIRMED.