

FEB 13 2013

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NOT FOR PUBLICATION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.

SUSANA MARIBEL GUTIERREZ-
RIVERA,

Defendant - Appellant.

No. 12-10280

D.C. No. 4:11-cr-01470-CKJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted February 11, 2011**

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

Susana Maribel Gutierrez-Rivera appeals from the district court’s judgment and challenges the 40-month sentence imposed following her guilty-plea conviction for conspiracy to unlawfully export machine guns and unregistered

* 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).

firearms, in violation of 18 U.S.C. §§ 371, 554(a), 922(o), and 924(a)(2); and 26 U.S.C. §§ 5841, 5861(d), and 5871. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Gutierrez-Rivera contends that the district court erred in denying her request for a minor role adjustment under U.S.S.G. § 3B 1.2(b). We review for clear error. *See United States v. Cantrell*, 433 F.3d 1269, 1282 (9th Cir. 2006). Because Gutierrez-Rivera failed to prove that she was “substantially less culpable than the average participant” in the conspiracy, the court did not clearly 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); *cert. denied*, 132 S. Ct. 1061 (2012).

Gutierrez-Rivera also contends that her sentence is substantively unreasonable in light of her lack of prior criminal history and history of employment. The district court did not abuse its discretion in imposing Gutierrez-Rivera’s sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The below-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including the seriousness of the offense. *See id.*

AFFIRMED.