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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NOT FOR PUBLICATION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>MARVIN G. SCHARFF,</p> <p>Defendant - Appellant.</p>

No. 12-10286

D.C. No. 1:94-cr-00059-FMTG

MEMORANDUM*

Appeal from the United States District Court
for the District of Guam
Frances M. Tydingco-Gatewood, Chief Judge, Presiding

Submitted June 10, 2013**

Before: HAWKINS, McKEOWN, and BERZON, Circuit Judges.

Marvin G. Scharff appeals from the district court’s judgment and challenges the 100-month sentence imposed following his guilty-plea conviction for two counts of importation of heroin, in violation of 21 U.S.C. § 952. 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).

Scharff contends that the district court procedurally erred by failing to respond to his mitigating arguments and by failing to explain adequately why it denied his request for a downward variance. 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 district court considered Scharff's mitigating arguments and adequately explained the sentence in light of the seriousness of the offense and other 18 U.S.C. § 3553(a) sentencing factors.

AFFIRMED.