

JUN 20 2013

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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NOT FOR PUBLICATION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>ROBERT DONALD AHENAKEW,</p> <p>Defendant - Appellant.</p>

No. 12-30298

D.C. No. 4:12-cr-00034-SEH

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Sam E. Haddon, District Judge, Presiding

Submitted June 18, 2013**

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

Robert Donald Ahenakew appeals from the district court’s judgment and challenges the 41-month sentence imposed following his guilty-plea conviction for burglary, in violation of 18 U.S.C. § 1153(a); and Mont. Code Ann. § 45-6-204(1). 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).

Ahenakew contends that the district court erred by imposing a two-level enhancement under U.S.S.G. § 2B2.1(b)(4) because it was not reasonably foreseeable that Ahenakew's codefendant would possess a dangerous weapon. We review for clear error a district court's determination that acts by others were reasonably foreseeable for purpose of imposing a dangerous weapon enhancement, *see United States v. Lavender*, 224 F.3d 939, 941-42 (9th Cir. 2000), and find none. The record, which indicated that Ahenakew knew that his codefendant always carried a knife, supports the district court's conclusion that it was reasonably foreseeable that Ahenakew's codefendant would possess a knife at the time of the burglary. *See Lavender*, 224 F.3d at 942; U.S.S.G. § 1B1.3(a)(1).

AFFIRMED.