

JUN 21 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NOT FOR PUBLICATION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.

IVIS D. MARTINEZ-MASCARENO,

Defendant - Appellant.

No. 12-30280

D.C. No. 2:12-cr-00069-RAJ

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Richard A. Jones, District Judge, Presiding

Submitted June 18, 2013**

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

Ivis D. Martinez-Mascareno appeals from the district court’s judgment and challenges the 48-month sentence imposed following his guilty-plea conviction for for conspiracy to distribute heroin, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A). 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).

Martinez-Mascareno contends that the district court erred when it denied his request for a minor role adjustment under U.S.S.G. § 3B1.2(b) without evaluating his role relative to that of an unindicted co-conspirator. The record reflects that the district court properly considered Martinez-Mascareno’s “culpability relative to the involvement of other likely actors” in the criminal scheme. *See United States v. Rojas-Millan*, 234 F.3d 464, 473-74 (9th Cir. 2000). Because Martinez-Mascareno failed to demonstrate that he was substantially less culpable than the average participant, the district court did not clearly err by denying the adjustment. *See* U.S.S.G. § 3B1.2 cmt. n.3(A); *United States v. Cantrell*, 433 F.3d 1269, 1282-83 (9th Cir. 2006).

AFFIRMED.