

OCT 02 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NOT FOR PUBLICATION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.

FRANCISCO FLORES-JORGE, a.k.a.
Paco,

Defendant - Appellant.

No. 12-10634

D.C. No. 2:11-cr-00048-JCM

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted September 24, 2013**

Before: RAWLINSON, N.R. SMITH, and CHRISTEN, Circuit Judges.

Francisco Flores-Jorge appeals from the district court’s judgment and challenges the 210-month sentence imposed following his guilty-plea conviction for conspiracy to distribute more than 50 grams of methamphetamine and four

* 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).

counts of distribution of a controlled substance, in violation of 21 U.S.C. §§ 841 and 846. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

Flores-Jorge contends that the district court erred by applying a two-level leadership enhancement under U.S.S.G. § 3B1.1(c). In light of the government's concession that there is insufficient evidence to support the role enhancement, we vacate and remand for resentencing. Upon remand, the district court shall recalculate the Guidelines range without the two-level enhancement and resentence Flores-Jorge.

We decline to reassign this case to a different district judge on remand. “Absent proof of personal bias on the part of the district judge, remand to a different judge is proper only under unusual circumstances.” *United States v. Reyes*, 313 F.3d 1152, 1159 (9th Cir. 2002). We find no basis in the record to support Flores-Jorge's contention that Judge Mahan is biased against him, and the circumstances do not otherwise warrant reassignment. *See id.*

In light of our decision, we do not reach the question of whether Flores-Jorge's sentence is substantively reasonable.

Flores-Jorge's motion to extend time to file his reply brief is granted. The Clerk shall file the reply brief received on August 30, 2013.

VACATED and REMANDED for resentencing.