

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 21 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RODOLFO LOPEZ-CUPA,

Defendant - Appellant.

No. 12-30309

D.C. No. 3:10-cr-05723-BHS

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Submitted October 15, 2013**

Before: FISHER, GOULD, and BYBEE, Circuit Judges.

Rodolfo Lopez-Cupa appeals from the district court's judgment and challenges the 120-month sentence imposed following his guilty-plea conviction for conspiracy to distribute methamphetamine, distribution of methamphetamine, and possession with intent to distribute methamphetamine, in violation of 21

* 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).

U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Lopez-Cupa contends that the district court erred by denying him relief under the safety valve provision of 18 U.S.C. § 3553(f). We review for clear error the district court's factual determination that a defendant is ineligible for safety valve relief. *See United States v. Mejia-Pimental*, 447 F.3d 1100, 1103 (9th Cir. 2007). The district court did not clearly err in finding that Lopez-Cupa did not truthfully provide the government all of the information he had regarding the offense. *See* 18 U.S.C. § 3553(f)(5); U.S.S.G. § 5C1.2(a)(5); *United States v. Orm Hieng*, 679 F.3d 1131, 1144-45 (9th Cir.), *cert. denied*, 133 S. Ct. 775 (2012). Because a defendant must meet all of the conditions set forth in section 3553(f) to be entitled to safety valve relief, *see United States v. Alba-Flores*, 577 F.3d 1104, 1107 (9th Cir. 2009), the district court properly denied Lopez-Cupa relief.

Lopez-Cupa also contends that the district court erred in applying obstruction of justice and aggravating role adjustments. We need not decide whether the district court erred, because any such error would be harmless. *See United States v. Ali*, 620 F.3d 1062, 1074 (9th Cir. 2010). The district court lacked discretion to sentence Lopez-Cupa below the statutory mandatory minimum.

AFFIRMED.