

DEC 30 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NOT FOR PUBLICATION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.

MARTIN YANEZ VERDUGO,

Defendant - Appellant.

No. 12-50545

D.C. No. 3:12-cr-01433-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Martin Yanez Verdugo appeals from the district court’s judgment and challenges the 68-month sentence imposed following his guilty-plea conviction for importation of cocaine, in violation of 21 U.S.C. §§ 952 and 960. 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).

Yanez Verdugo contends that the district court erred by denying his request for a minor role adjustment under U.S.S.G. § 3B1.2(b), because it presumed drug couriers are ineligible for a minor role adjustment, improperly considered government evidence in other cases, and improperly considered premeditation. We review de novo the district court's interpretation of the Guidelines, for abuse of discretion the district court's application of the Guidelines to the facts of the case, and for clear error its factual determination that a defendant is not a minor participant. *United States v. Rodriguez-Castro*, 641 F.3d 1189, 1192 (9th Cir. 2011). We need not decide whether the district court erred because any error was harmless in light of the district court's determination, supported by the record, that Yanez Verdugo failed to prove he was substantially less culpable than the average participant in the offense. *See* U.S.S.G. § 3B1.2(b) & cmt. n.3(A); *see also Rodriguez-Castro*, 641 F.3d at 1193 (district court did not err in declining to apply minor role adjustment where defendant, a courier, registered car in his name, created a "crossing record," and transported a substantial amount of narcotics).

AFFIRMED.