

JAN 24 2014

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NOT FOR PUBLICATION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.

JORGE GUERRA-ESPARZA,

Defendant - Appellant.

No. 12-10470

D.C. No. 2:11-cr-01947-ROS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Submitted January 21, 2014**

Before: CANBY, SILVERMAN, and PAEZ, Circuit Judges.

Jorge Guerra-Esparza appeals from the district court's judgment and challenges the 120-month sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846; and possession with intent to distribute cocaine and aiding and abetting, in

* 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).

violation of 21 U.S.C. § 841(a)(1), 841(b)(1)(A)(ii), and 18 U.S.C. § 2. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Guerra-Esparza contends that the district court committed legal error when it denied him safety-valve relief under 18 U.S.C. § 3553(f). Notwithstanding the court's alleged misstatements regarding the requirements for obtaining safety-valve relief, the record reflects that the court agreed with the government's determination that Guerra-Esparza had not truthfully and fully provided the government with all of the information he had concerning the offense. Because the record supports this determination, the district court did not clearly err in denying relief. *See* 18 U.S.C. § 3553(f)(5); *United Mejia-Pimental*, 477 F.3d 1100, 1103 (9th Cir. 2007).

Because the district court lacked discretion to sentence Guerra-Esparza below the statutory mandatory minimum, we do not reach his remaining contentions of sentencing error.

Guerra-Esparza's stipulated motion to supplement the record is granted.

AFFIRMED.