

JAN 27 2014

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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NOT FOR PUBLICATION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.

ERASMO BIRRUETA LEMUS,

Defendant - Appellant.

No. 13-30001

D.C. No. 2:12-cr-06012-EFS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted January 21, 2014**

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

Erasmus Birrueta Lemus appeals from the district court's judgment and challenges the 120-month sentence imposed following his guilty-plea conviction for conspiracy to possess and possession with intent to distribute at least 50 grams of actual methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846; and

* 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).

aiding and abetting, in violation of 18 U.S.C. § 2. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Birrueta Lemus contends that the district court erred by finding him ineligible for safety valve relief. We review for clear error, *see United States v. Mejia-Pimental*, 477 F.3d 1100, 1103 (9th Cir. 2007), and find none. The record supports the district court's finding that Birrueta Lemus failed to provide the government with all of the information that he had concerning the offense. *See* 18 U.S.C. § 3553(f)(5); *United States v. Thompson*, 81 F.3d 877, 880 (9th Cir. 1996) (“[A] defendant must give the Government *all* the information he has concerning the offense, *including* the source of his drugs, to avail himself of the benefit of [the safety valve].”).

Birrueta Lemus also contends the district court erred by failing to place the case agent under oath and by depriving Birrueta Lemus of his Sixth Amendment right to confront the witnesses against him. We review for plain error, *see United States v. Orm Hieng*, 679 F.3d 1131, 1138-39 (9th Cir. 2012), and find none. Birrueta Lemus has not shown a reasonable probability that he would have received a different sentence had the court placed the agent under oath or given Birrueta Lemus the opportunity to cross-examine the agent. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008).

AFFIRMED.