

FEB 27 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NOT FOR PUBLICATION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.

ARMANDO GONZALEZ-HEREDIA,
a.k.a. Gallo,

Defendant - Appellant.

No. 12-50233

D.C. No. 3:09-cr-01684-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted February 18, 2014**

Before: ALARCÓN, O’SANNLAIN, and FERNANDEZ, Circuit Judges.

Armando Gonzalez-Heredia appeals from the district court’s judgment and challenges the 97-month sentence imposed following his guilty-plea conviction for conspiracy to kidnap, in violation of 18 U.S.C. § 1201(a)(1) and (c);

* 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).

and conspiracy to distribute marijuana and cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction under 28 U.S.C. § 1291, and we dismiss.

On May 21, 2012, Gonzalez-Heredia filed a pro se notice of appeal from the judgment entered by the district court on March 5, 2012. Because the notice of appeal was not timely filed, *see* Fed. R. App. P. 4(b), the government now urges this court to dismiss the appeal. Under these circumstances, we must dismiss. *See United States v. Sadler*, 480 F.3d 932, 942 (9th Cir. 2007) (where the government properly raises untimeliness argument, dismissal is mandatory). Contrary to Gonzalez-Heredia's contention, the Appellate Commissioner order dated September 7, 2012, did not contain a determination as to timeliness, but rather simply discharged the order to show cause.

DISMISSED.