

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NOT FOR PUBLICATION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.