

AUG 01 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NOT FOR PUBLICATION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.

CARLOS RUIZ,

Defendant - Appellant.

No. 13-50329

D.C. No. 3:13-cr-00754-LAB-1

MEMORANDUM*

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

Submitted July 7, 2014**
Pasadena, California

Before: SILVERMAN, TALLMAN, and RAWLINSON, Circuit Judges.

Carlos Ruiz appeals the 78-month sentence imposed by the district court following his guilty plea to importing 10.40 kilograms of methamphetamine 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).

1.64 kilograms of heroin into the United States from Mexico in violation of 21 U.S.C. §§ 952 and 960. We affirm the sentence.

The district court applied the proper test when it denied Ruiz a minor role reduction pursuant to United States Sentencing Guideline § 3B1.2(b). It was not required to compare Ruiz to hypothetical participants. *United States v. Rosas*, 615 F.3d 1058, 1068 (9th Cir. 2010). The mere fact that Ruiz was a courier did not entitle him to a minor role adjustment. *United States v. Hurtado*, No. 13-50170, 2014 WL 3720241, at *3 (9th Cir. July 7, 2014); *United States v. Rodriguez-Castro*, 641 F.3d 1189, 1193 (9th Cir. 2011). The district court did not clearly err in finding that Ruiz was a run-of-the-mill drug smuggler for money, no better, no worse. The substantial quantity of drugs and Ruiz's admission that he had successfully crossed the border with narcotics on four previous occasions support the district court's finding that Ruiz was not a minor participant. *Id.*

Finally, the district court did not abuse its discretion when it sentenced Ruiz to 78 months, 30 months below the minimum guideline sentence, after considering the relevant sentencing factors and totality of the circumstances.

AFFIRMED.