

SEP 04 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NOT FOR PUBLICATION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.

ALVARO MEJIA,

Defendant - Appellant.

No. 13-50450

D. C. 2:06-cr-00243-SJO-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted August 25, 2014**
Pasadena, California

Before: O'SCANNLAIN and RAWLINSON, Circuit Judges, and RAKOFF,
Senior District Judge.***

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Jed S. Rakoff, Senior District Judge for the U.S. District Court for the Southern District of New York, sitting by designation.

Defendant-Appellant Alvaro Mejia appeals from the District Court's judgment revoking his supervised release and imposing a 30-month sentence of imprisonment. Because Mejia has withdrawn his challenge to the District Court's finding that he violated the terms and conditions of his supervised release, the only issue that remains is his sentence. Mejia contends, and the government concedes, that the District Court incorrectly calculated his state law offenses as Grade A violations under Section 7B1.1(a) of the advisory United States Sentencing Guidelines ("Guidelines"), when in fact they were Grade B violations. The parties concur that this plain error resulted in a Guidelines range of 24 to 30 months, rather than the correct range of 12 to 18 months. We agree.¹

Accordingly, we VACATE the sentence and REMAND this matter to the District Court for resentencing.

¹ Because we remand for resentencing based on the Guidelines error, we do not address Mejia's challenge to the reasonableness of his sentence.