

OCT 20 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NOT FOR PUBLICATION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.

JESUS ANTONIO VIRREY-CAMEZ,

Defendant - Appellant.

No. 14-10025

D.C. No. 4:11-cr-01952-JGZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Jennifer G. Zipps, District Judge, Presiding

Submitted October 14, 2014**

Before: LEAVY, GOULD, and BERZON, Circuit Judges.

Jesus Antonio Virrey-Camez appeals from the 48-month sentence imposed on resentencing following his guilty-plea conviction for possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(b)(1)(A). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Virrey-Camez contends that the district court imposed a substantively unreasonable sentence because it gave too much weight to the facts underlying the dismissed importation count. The district court did not abuse its discretion in imposing Virrey-Camez's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). A court may consider dismissed counts at sentencing. *See* U.S.S.G. § 1B1.4; *United States v. Barragan-Espinoza*, 350 F.3d 978, 983 (9th Cir. 2003). In light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, the below-Guidelines sentence is substantively reasonable. *See Gall*, 552 U.S. at 51.

AFFIRMED.