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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NOT FOR PUBLICATION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.

CARLOS ALBERTO MADERO-
HIGUERA,

Defendant - Appellant.

No. 14-50073

D.C. No. 3:13-cr-02436-JLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted November 18, 2014**

Before: LEAVY, FISHER, and N.R. SMITH, Circuit Judges.

Carlos Alberto Madero-Higuera appeals from the district court's judgment and challenges the 70-month sentence imposed following his guilty-plea

* 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).

conviction for possession of cocaine with intent to distribute, in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Madero-Higuera contends that the district court erred by failing to exercise its independent judgment in denying his request for a minor role adjustment under U.S.S.G. § 3B1.2(b). The record does not support this contention. The district court considered the parties' arguments and concluded that the record did not provide a basis for finding that Madero-Higuera played a minor role in the criminal scheme. The court's rejection of the adjustment was consistent with the guideline and our precedent. *See* U.S.S.G. § 3B1.2 cmt. n.3(A) (adjustment available only if defendant is "substantially less culpable than the average participant"); *United States v. Rodriguez-Castro*, 641 F.3d 1189, 1193 (9th Cir. 2011) (defendant's burden to establish his entitlement to the adjustment).

AFFIRMED.