

DEC 10 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NOT FOR PUBLICATION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.

MARCO ANTHONY WILLIAMS,

Defendant - Appellant.

No. 14-50172

D.C. No. 3:13-cr-04218-GPC-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gonzalo P. Curiel, District Judge, Presiding

Submitted December 8, 2014**
Pasadena, California

Before: GRABER, GOULD, and CALLAHAN, Circuit Judges.

Defendant Marco Anthony Williams appeals the district court's imposition of a 21-month sentence of imprisonment following his conviction of attempted entry of a removed alien, in violation of 8 U.S.C. § 1326. Reviewing de novo whether Defendant's prior conviction warranted a 16-level increase under United

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

States Sentencing Guidelines § 2L1.2, United States v. Gomez-Leon, 545 F.3d 777, 782 (9th Cir. 2008), we affirm.

1. California Health and Safety Code "Section 11351 is categorically broader than the Guidelines definition of 'drug trafficking offense' because it criminalizes possession or purchase of certain substances that are not covered by the [Controlled Substances Act]." United States v. Leal-Vega, 680 F.3d 1160, 1167 (9th Cir. 2012). But, as we held recently, section 11351 is divisible with respect to the type of controlled substance, so the modified categorical approach may be used. United States v. De La Torre-Jimenez, No. 13-50438, 2014 WL 5786715, at *3 (9th Cir. Nov. 7, 2014).

2. The district court correctly applied the modified categorical approach and concluded that Defendant's conviction involved cocaine, a federally controlled substance. The documents at issue here are materially indistinguishable from the ones we found sufficient in Torre-Jimenez, *id.* at *4–5. Defendant's arguments concerning United States v. Vidal, 504 F.3d 1072, 1087 (9th Cir. 2007) (en banc), were rejected in Torre-Jimenez, 2014 WL 5786715, at *4–5.

AFFIRMED.