

SEP 02 2015

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NOT FOR PUBLICATION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.

ERIK ALTAMIRANO,

Defendant - Appellant.

No. 15-50090

D.C. No. 3:14-cr-03059-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted August 25, 2015**

Before: McKEOWN, CLIFTON, and HURWITZ, Circuit Judges.

Erik Altamirano appeals from the district court's judgment and challenges the 18-month sentence imposed following his guilty-plea conviction for importation of heroin, in violation of 21 U.S.C. §§ 952, 960. 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).

Altamirano contends that the district court applied the wrong legal standard and considered improper factors when determining whether he was entitled to a minor role adjustment under U.S.S.G. § 3B1.2(b). We review the district court's interpretation of the Sentencing Guidelines de novo. *See United States v. Hurtado*, 760 F.3d 1065, 1068 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 1467 (2015). The district court considered the parties' arguments and concluded that the record did not support a finding that Altamirano was entitled to a minor role adjustment. 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. Rosas*, 615 F.3d 1058, 1067 (9th Cir. 2010) (defendant's burden to establish his entitlement to the adjustment). Finally, the district court was not required to consider Altamirano's lack of knowledge of the smuggling enterprise when determining whether Altamirano played a minor role in the offense. *See* U.S.S.G. § 3B1.2 cmt. n.4 (lack of knowledge relevant to *minimal* participant adjustment).

AFFIRMED.