

AUG 01 2016

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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NOT FOR PUBLICATION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.

JOSE HERNANDEZ,

Defendant-Appellant.

No. 15-50148

D.C. No. 3:14-cr-02812-AJB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Submitted July 26, 2016**

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Jose Hernandez appeals from the district court's judgment and challenges the 46-month sentence imposed following his guilty-plea conviction for importation of methamphetamine, in violation of 21 U.S.C. §§ 952 and 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 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).

Hernandez contends that the district court procedurally erred by relying on clearly erroneous facts in sentencing. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). Specifically, he argues that the government misrepresented his actions leading up to the offense and that the misrepresentation may have caused the district court to deny his request for a minor-role adjustment under U.S.S.G. § 3B1.2(b). The record does not support this contention. Although the government erroneously stated that Hernandez had admitted to smuggling suspicious packages into the United States on prior occasions, defense counsel corrected the misrepresentation during the hearing. Moreover, the record reflects that the district court's minor-role decision was based on the steps Hernandez took to prepare for the offense, rather than the government's misrepresentation.

AFFIRMED.