

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 3 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 16-50317

Plaintiff-Appellee,

D.C. No. 3:15-cr-02048-BEN

v.

MEMORANDUM*

JULIAN JUAREZ,

Defendant-Appellant.

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

Submitted June 26, 2017**

Before: PAEZ, BEA, and MURGUIA, Circuit Judges.

Julian Juarez appeals from the district court's judgment and challenges the 30-month sentence imposed following his guilty-plea conviction for distribution of heroin, in violation of 21 U.S.C. § 841(a)(1). 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).

Juarez contends that the district court erred in denying his request for a minor role reduction under U.S.S.G. § 3B1.2(b). He argues that the court did not adequately consider all of the factors contained in the commentary to the Guideline, and failed to compare him to all of his co-participants in the offense. Reviewing de novo, *see United States v. Quintero-Leyva*, 823 F.3d 519, 522 (9th Cir. 2016), we conclude that Juarez’s claims fail. The record reflects that the court invited comment at the sentencing hearing on each of the five factors and properly considered those factors, as well as the totality of the circumstances, before concluding that Juarez was not “substantially less culpable than the average participant.” U.S.S.G. § 3B1.2 cmt. n.3(A), (C). Moreover, the court compared Juarez to his named co-participants in the offense and considered other possible participants in the overall scheme. Finally, contrary to Juarez’s claim, the court did not apply this court’s precedent in a way that conflicts with the minor role Guideline. *See Quintero-Leyva*, 823 F.3d at 523 (because the five factors are non-exhaustive, “a district court may also consider other reasons for granting or denying a minor role reduction”).

AFFIRMED.