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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. MICHAEL S. CARONA, Defendant - Appellant.	No. 13-55597 D.C. Nos. 8:12-cv-01931-AG 8:06-cr-00224-AG-2 MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Andrew J. Guilford, District Judge, Presiding

Argued and Submitted November 6, 2013
Pasadena, California

Before: FISHER and CLIFTON, Circuit Judges, and SINGLETON, Senior District Judge.**

Defendant Michael Carona appeals the district court's denial of his motion under 28 U.S.C. § 2255. We affirm.

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

** The Honorable James K. Singleton, Senior District Judge for the District Court for the District of Alaska, sitting by designation.

The district court did not clearly err in finding that Carona obstructed a criminal investigation into a form of honest services fraud that survived *Skilling v. United States*, 130 S. Ct. 2896 (2010). The investigation was looking into possible bribery. Whether Carona actually committed or was convicted of bribery is immaterial. Under *United States v. Arias*, 253 F.3d 453 (9th Cir. 2009), the cross-reference to U.S.S.G. § 2X3.1 "applies without regard to whether the underlying offense is provable." 253 F.3d at 455. As we explained in that decision, "proof of the underlying offense is not material, because the point of the cross reference is to punish more severely (and to provide a greater disincentive for) . . . obstruction of prosecutions with respect to more serious crimes." *Id.* at 459. Because the district court did not clearly err in finding that bribery was one of the crimes being investigated, it was appropriate to sentence Carona accordingly.

Carona's challenge to the substantive reasonableness of the sentence is based on the premise that the guidelines range was not correctly calculated by the district court, but we conclude that the range was not improperly determined. The sentence imposed was not substantively unreasonable.

AFFIRMED.