

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-10098

Plaintiff-Appellee,

D.C. No. 4:15-cr-02148-CKJ

v.

MEMORANDUM*

JOSE LOPEZ-CASTILLO,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Jose Lopez-Castillo appeals from the district court's judgment and challenges the 120-month, mandatory-minimum sentence imposed following his guilty-plea conviction for possession with intent to distribute and conspiracy to possess with intent to distribute marijuana, in violation of 21 U.S.C. §§ 841(a)(1),

* 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).

(b)(1)(A)(vii) and 846. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Lopez-Castillo challenges the district court's failure to award safety-valve relief from the mandatory minimum under 18 U.S.C. § 3553(f). He argues that the district court erred by failing to define the scope of the disclosure required under section 3553(f)(5) and failing to make a specific finding that his disclosure did not meet the requirement. This claim fails because the court specifically found that Lopez-Castillo had failed to provide the government with truthful and complete information about his involvement in the drug-trafficking organization. Lopez-Castillo has not shown that the court's failure to say more was a violation of Rule 32(i)(3)(B), even assuming it is applicable here. The district court's finding that Lopez-Castillo was ineligible for safety-valve relief was not clearly erroneous. *See United States v. Orm Hieng*, 679 F.3d 1131, 1144-45 (9th Cir. 2012). Nor did the district court abuse its discretion by denying safety-valve relief without conducting an evidentiary hearing. *See United States v. Real-Hernandez*, 90 F.3d 356, 362 (9th Cir. 1996).

Lopez-Castillo also argues that *United States v. Booker*, 543 U.S. 220 (2005), and its progeny abrogated mandatory-minimum sentencing. Our decision in *United States v. Wipf*, 620 F.3d 1168 (9th Cir. 2010), forecloses this argument.

AFFIRMED.