

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 15 2019

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-50276

Plaintiff-Appellee,

D.C. No. 3:10-cr-03044-WQH-1

v.

MEMORANDUM*

AMANDO VILLARREAL HEREDIA,
a.k.a. Gordo, a.k.a. Gordo Villareal, a.k.a.
Amando Villareal Heredia, a.k.a. Armando
Villareal Heredia,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted March 12, 2019**

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Amando Villarreal Heredia appeals pro se from the district court's order denying his motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). 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).

On remand from this court, the district court determined that Heredia's offenses involved more than 45 kilograms of methamphetamine mixture and, therefore, that Amendment 782 to the Sentencing Guidelines did not lower his base offense level. Because Heredia's Guidelines range was not lowered, the district court concluded that he was ineligible for a sentence reduction. Heredia contends that the district court erred in its drug quantity determination, and that he is eligible for a reduction. We review the district court's eligibility determination de novo, and its drug quantity calculation for clear error. *See United States v. Mercado-Moreno*, 869 F.3d 942, 953 (9th Cir. 2017).

The court's quantity finding is amply supported by the facts contained in the plea agreement and the presentence report ("PSR"). Contrary to Heredia's contention, the district court was not precluded from relying on the uncontested facts in the PSR to determine drug quantity. *See id.* at 957. That the district court adopted the plea agreement's Guidelines calculation at sentencing, rather than the calculation stated in the PSR, does not change this conclusion. Moreover, because the plea agreement stated that the conspiracy involved *more than* 1.5 kilograms of pure methamphetamine, the district court's quantity determination did not conflict with the plea agreement, and the government did not breach the plea agreement by arguing for an amount greater than 1.5 kilograms. The district court did not clearly err in its drug quantity determination; thus, it correctly concluded that Heredia was

ineligible for a sentence reduction. *See* 18 U.S.C. § 3582(c)(2); U.S.S.G.
§ 2D1.1(c)(1) (2014).

AFFIRMED.