

FILED

JUN 16 2020

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CONSTANTINO SALMON VARELA,
AKA Constantino S. Varela,

Defendant-Appellant.

No. 19-10185

D.C. No.

4:17-cr-01659-JAS-EJM-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
James Alan Soto, District Judge, Presiding

Submitted June 11, 2020**
San Francisco, California

Before: SCHROEDER and BUMATAY, Circuit Judges, and MORRIS,** District Judge.

* 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).

*** The Honorable Brian M. Morris, United States District Judge for the District of Montana, sitting by designation.

Constantine Salmon Varela appeals the district court's sentence of concurrent terms of 72 months in prison, to be followed by three years of supervised release for violating 18 U.S.C. § 922, 18 U.S.C. § 924(a)(2), Possession of Firearms by a Convicted Felon, and 26 U.S.C. § 5861(d), 26 U.S.C. § 5871, and 26 U.S.C. § 5841, Unlawful Possession of Unregistered Destructive Device. On appeal, the government agrees with Varela that the sentence should be vacated and remanded to the district court for resentencing, because the government withheld Varela's request for a one-point reduction under USSG § 3E1.1(b) for accepting responsibility of the crimes. We therefore vacate and remand for resentencing on an open record. *See United States v. Matthews*, 278 F.3d 880, 885 (9th Cir. 2002) (en banc) (“[A]s a general matter, if a district court errs in sentencing, we will remand for resentencing on an open record[.]”).

VACATE AND REMAND.