

OCT 26 2010

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NOT FOR PUBLICATION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.

ALMA MACHADO-MEDINA,

Defendant - Appellant.

No. 09-10423

D.C. No. 4:09-cr-00579-FRZ-
JCG-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted August 18, 2010**
San Francisco, California

Before: HUG, SKOPIL and BEEZER, Circuit Judges.

Alma Machado-Medina appeals the district court's sentence of 24 months following her guilty plea to charges of importation of marijuana and possession with intent to distribute. Medina contends that the government prosecuted her

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

vindictively for exercising her right to appeal by failing to move for a one-level sentencing reduction under U.S.S.G. § 3E1.1(b). We have jurisdiction under 18 U.S.C. § 3742. We affirm.

We review for clear error a district court's decision not to grant an additional reduction to a defendant's sentence. United States v. Johnson, 581 F.3d 994, 1001 (9th Cir. 2009). We review de novo a district court's interpretation and application of the sentencing guidelines. Id.

The facts of this case are known to the parties. We do not repeat them.

At sentencing, the government may, in its discretion, refuse to request a reduction under U.S.S.G. § 3E1.1(b) based on a defendant's refusal to waive his or her appeal rights. See Johnson, 581 F.3d at 1002; United States v. Medina-Beltran, 542 F.3d 729, 731–32 (9th Cir. 2008) (per curiam).

AFFIRMED.