

DEC 19 2013

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NOT FOR PUBLICATION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.

HECTOR ALVAREZ,

Defendant - Appellant.

No. 12-10637

D.C. No. 5:97-cr-20039-RMW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Ronald M. Whyte, District Judge, Presiding

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Hector Alvarez appeals from the district court’s judgment and challenges the 108-month sentence imposed following his guilty-plea conviction for conspiracy to possess heroin with intent to distribute, in violation of 21 U.S.C. § 846. 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 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).

Alvarez contends that the district court procedurally erred by miscalculating the advisory Sentencing Guidelines range. We review for plain error. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). Although the record reflects that the district court misstated the applicable Guidelines range, it also makes clear that the court understood itself to be sentencing within the correct 97- to 121-month range. Because Alvarez has not shown a reasonable probability that he would have received a different sentence had the court not misspoken, he is not entitled to relief. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008).

Alvarez also contends that the district court procedurally erred by failing to consider and address his arguments about his state sentence. To the contrary, the record reflects that the court considered Alvarez's arguments and adequately explained the sentence imposed. *See Rita v. United States*, 551 U.S. 338, 358-59 (2007).

AFFIRMED.