

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 3 2017

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RAUL EDUARDO GARCIA-PINA,

Defendant-Appellant.

No. 16-50026

D.C. No. 2:15-cr-00521-PA

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Percy Anderson, District Judge, Presiding

Submitted June 26, 2017**

Before: PAEZ, BEA, and MURGUIA, Circuit Judges.

Raul Eduardo Garcia-Pina appeals from the district court's judgment and challenges the 46-month sentence imposed following his guilty-plea conviction for possession with intent to distribute heroin, in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). We have jurisdiction under 28 U.S.C. § 1291, and we vacate and

* 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).

remand for resentencing.

Garcia-Pina argues that the district court erred in denying a minor role reduction to his base offense level under U.S.S.G. § 3B1.2(b). He argues that he is entitled to an adjustment under Amendment 794 (“the Amendment”), which added a non-exhaustive list of five factors that a court “should consider” in determining whether to grant a minor role reduction. *See* U.S.S.G. § 3B1.2 cmt. n.3(C). He asks this court to remand for the district court to grant the reduction or to conduct a resentencing under the Amendment. We agree that Garcia-Pina should be resentenced under the Amendment.

The Amendment became effective less than three months before Garcia-Pina was sentenced. Neither party explicitly discussed the Amendment at the sentencing hearing. Moreover, the district court did not acknowledge the Amendment or apply any of the five factors, nor did it conduct any comparative analysis between Garcia-Pina and his co-participants in the offense. On this record, we cannot determine whether the district court properly applied the amended minor role Guideline. Accordingly, we vacate Garcia-Pina’s sentence and remand for resentencing under the Amendment. *See United States v. Quintero-Leyva*, 823 F.3d 519, 523-24 (9th Cir. 2016).

VACATED and REMANDED for resentencing.