

FILED

OCT 12 2017

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NOT FOR PUBLICATION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.

**GARY WHITE, AKA Big J-Killa, AKA
Big Killa, AKA JC, AKA James Cail
White, AKA JC White,**

Defendant-Appellant.

No. 16-50113

D.C. No.
2:10-cr-00923-SJO-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Argued and Submitted August 8, 2017
Pasadena, California

Before: **REINHARDT, KOZINSKI** and **CHRISTEN**, Circuit Judges.

1. “[T]he district court may not contradict an affirmative finding by the jury.” United States v. Pimentel-Lopez, 859 F.3d 1134, 1143 (9th Cir. 2016) (as

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

amended). The district court here erred by sentencing White based on a higher drug weight than the jury found in its special verdict. See id. at 1140.

2. The district court also erred by relying on evidence outside the record without notifying White in advance. See United States v. Warr, 530 F.3d 1152, 1162–63 (9th Cir. 2008).

VACATED AND REMANDED.