

OCT 28 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NOT FOR PUBLICATION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.

RAMON GUADALUPE SOBERANES-
FIERRO,

Defendant - Appellant.

No. 08-50555

D.C. No. 3:08-cr-01345-JLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Ramon Guadalupe Soberanes-Fierro appeals from the 120-month sentence imposed following his guilty-plea conviction for importation of cocaine, in

* 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).

violation of 21 U.S.C. §§ 952 and 960. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Soberanes-Fierro contends that the district court erred at sentencing by failing to grant him safety valve relief. First, and contrary to Soberanes-Fierro's arguments, the record reflects that the district court applied the correct burden of proof in determining whether Soberanes-Fierro provided the government with complete and truthful information concerning the offense. *See United States v. Ajugwo*, 82 F.3d 925, 929 (9th Cir. 1996) (defendant has burden of proving, by a preponderance of the evidence, that he is entitled to safety valve relief); *United States v. Shrestha*, 86 F.3d 935, 940 (9th Cir. 1996) (burden shifts to government *only after* defendant has made requisite showing). Additionally, the record reflects that the district court did not clearly err by determining that Soberanes-Fierro failed to meet his burden. *See Ajugwo*, 82 F.3d at 929-30.

AFFIRMED.