

MAY 18 2012

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NOT FOR PUBLICATION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.

JESUS EFRAIN ARMENTA-
MOROYOQUI, a.k.a. Jesus Efrain-
Armenia, a.k.a. Guerro,

Defendant - Appellant.

No. 11-50074

D.C. No. 2:10-cr-00286-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted May 15, 2012**

Before: CANBY, GRABER, and M. SMITH, Circuit Judges.

Jesus Efrain Armenta-Moroyoqui appeals from the 70-month sentence imposed following his guilty-plea conviction for two drug offenses involving

* 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).

marijuana. We have jurisdiction under 28 U.S.C. § 1291, and we affirm, but remand to correct the judgment.

Armenta-Moroyoqui contends that the district court procedurally erred by failing to consider the reason for an alleged sentencing disparity with a co-defendant, by failing to appreciate fully its discretion to vary below the Guidelines range based on a policy disagreement, and by failing adequately to explain its exercise of that discretion. The district court did not procedurally err. The record reflects that the district court considered the need to avoid unwarranted sentencing disparities, as well as Armenta-Moroyoqui's arguments in mitigation, and adequately explained its decision not to grant a variance below the Guidelines range. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

We remand the case to the district court with instructions that it amend the judgment to reflect that the second charge to which Armenta-Moroyoqui pled guilty is possession with intent to distribute at least 1,000 kilograms of marijuana.

AFFIRMED; REMANDED to correct the judgment.