

AUG 16 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NOT FOR PUBLICATION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.

EFRAIN FLORES,

Defendant - Appellant.

No. 12-30033

D.C. No. 2:10-cr-06089-RMP

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Rosanna Malouf Peterson, Chief Judge, Presiding

Submitted August 14, 2013**

Before: SCHROEDER, GRABER, and PAEZ, Circuit Judges.

Efrain Flores appeals from the district court's judgment and challenges the 63-month sentence imposed following his guilty-plea conviction for possession with intent to distribute 50 grams or more of "actual" (pure) methamphetamine, in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction under 28 U.S.C. § 1291,

* 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).

and we affirm.

Flores contends that the district court erred in denying him a minor role adjustment under U.S.S.G. § 3B1.2(b). We review for clear error. *See United States v. Cantrell*, 433 F.3d 1269, 1282 (9th Cir. 2006). Because Flores failed to prove that he was substantially less culpable than the average participant in the offense, the district court did not clearly err by denying the adjustment. *See* U.S.S.G. § 3B1.2 cmt. n.3(A); *Cantrell*, 433 F.3d at 1282-83.

AFFIRMED.