

JUN 25 2015

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NOT FOR PUBLICATION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.

CANDELARIO GONZALEZ-GARCIA,

Defendant - Appellant.

No. 14-50250

D.C. No. 3:14-cr-00021-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted June 22, 2015**

Before: HAWKINS, GRABER, and W. FLETCHER, Circuit Judges.

Candelario Gonzalez-Garcia appeals from the district court's judgment and challenges the 78-month sentence imposed following his guilty-plea conviction for importation of methamphetamine, in violation of 21 U.S.C. §§ 952 and 960. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Gonzalez-Garcia contends that the district court legally erred when it denied his request for a minor role adjustment under U.S.S.G. § 3B1.2(b). He argues that the court erred by (i) comparing him to the hypothetical average importer of narcotics, rather than to other likely participants in the instant offense; (ii) limiting its analysis to the offense of conviction, rather than the larger criminal scheme; and (iii) requiring clear and convincing evidence that he was entitled to the adjustment. We review the district court's interpretation of the Guidelines de novo. *See United States v. Hurtado*, 760 F.3d 1065, 1068 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 1467 (2015). Any error in this case was harmless. The court ultimately denied the adjustment based on proper considerations. *See id.* at 1069 (affirming denial of minor role where appellant was paid to smuggle a significant amount of drugs across the border in a truck that was registered in his name). Moreover, Gonzalez-Garcia's sentence is within the Guidelines range that would have applied had the district court determined that he was eligible for the minor role adjustment. *See United States v. Munoz-Camarena*, 631 F.3d 1028, 1030 & n.5 (9th Cir. 2011) (*per curiam*).

AFFIRMED.