

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 27 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 16-50474

Plaintiff-Appellee,

D.C. No. 3:14-cr-02045-LAB

v.

MEMORANDUM\*

FRANCISCO ANTONIO GALLO-  
TAVIZON,

Defendant-Appellant.

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

Submitted October 23, 2017\*\*

Before: LEAVY, WATFORD, and FRIEDLAND, Circuit Judges.

Francisco Antonio Gallo-Tavizon appeals from the district court's judgment and challenges the 85-month sentence imposed upon remand 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.

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

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Gallo-Tavizon contends that the district court misinterpreted and misapplied the minor role Guideline, U.S.S.G. § 3B1.2, in denying his request for a minor role reduction. We review the district court's interpretation of the Guidelines de novo, and its application of the Guidelines to the facts for abuse of discretion. *See United States v. Gasca-Ruiz*, 852 F.3d 1167, 1170 (9th Cir. 2017) (en banc).

Contrary to Gallo-Tavizon's argument, the district court fully considered the five factors under the amended Guideline in determining that he was not "substantially less culpable than the average participant." U.S.S.G. § 3B1.2 cmt. n.3(A), (C). Furthermore, the record reflects that, in assessing Gallo-Tavizon's role, the court properly compared Gallo-Tavizon to his co-participants in the offense. *See United States v. Quintero-Leyva*, 823 F.3d 519, 523 (9th Cir. 2016). The court discussed drug couriers in other cases only in reference to the issue of how greatly Gallo-Tavizon stood to benefit from the offense. *See* U.S.S.G. § 3B1.2 cmt. n.3(C)(v). Finally, the court did not err in considering Gallo-Tavizon's previous drug crossings. *See United States v. Cantrell*, 433 F.3d 1269, 1283 (9th Cir. 2006).

In light of the totality of the circumstances, the district court did not abuse its discretion in concluding that Gallo-Tavizon was not a minor participant. *See* U.S.S.G. § 3B1.2 cmt. n.3(C).

**AFFIRMED.**