

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 18 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-30148

Plaintiff-Appellee,

D.C. No. 1:16-cr-00004-SPW

v.

MEMORANDUM*

OMAR COTA, a.k.a. Omar Cota-Lopez,

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON, and NGUYEN, Circuit Judges.

Omar Cota appeals from the district court's judgment and challenges the 121-month sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841 and 846. 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 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).

Cota contends that the district court clearly erred in determining the amount of drugs involved in his offense. He argues that the court relied upon facts that did not have sufficient indicia of reliability, and did not err on the side of caution in performing its calculation, as it was required to do. We review the court's factual finding regarding drug quantity for clear error. *See United States v. Dallman*, 533 F.3d 755, 760 (9th Cir. 2008).

The district court did not clearly err. The court based its approximation on reliable evidence, including the total quantity of methamphetamine seized and the investigating officer's testimony at the sentencing hearing. Contrary to Cota's argument, the district court did not err in relying on his co-conspirator's hearsay statement because other evidence corroborated that statement. *See United States v. Ingham*, 486 F.3d 1068, 1076 (9th Cir. 2007) (district court may rely on hearsay at sentencing as long as it is supported by "some minimal indicia of reliability" (internal quotations omitted)). Moreover, the district court exercised an appropriate degree of caution because Cota failed to present any supporting evidence for his proposed drug quantity approximation and the evidence suggested an even larger quantity than that found by the district court.

AFFIRMED.