

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 14 2020

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 19-50058

Plaintiff-Appellee,

D.C. No. 3:18-cr-4314-LAB-1

v.

MEMORANDUM\*

PORFIRIO RUIZ,

Defendant-Appellant.

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

Submitted January 8, 2020\*\*

Before: CALLAHAN, NGUYEN, and HURWITZ, Circuit Judges.

Porfirio Ruiz appeals from the district court's judgment and challenges the 108-month custodial sentence and 5-year term of supervised release 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.

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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).

§ 1291, and we affirm.

Ruiz contends that the sentence is substantively unreasonable because it fails to reflect his minor role in the overall drug trafficking scheme. Though he acknowledges that he did not seek a minor role adjustment under the Guidelines in the district court, he argues that the court nevertheless should have varied downward in light of his low status in the drug organization. He also argues that a downward variance was warranted in light of his limited criminal history and the other mitigating factors in his case.

The district court did not abuse its discretion by declining to grant a downward variance. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The within-Guidelines custodial sentence, and the five-year term of supervised release, are substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including the very large amount of drugs Ruiz imported. *See Gall*, 552 U.S. at 51.

**AFFIRMED.**