

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 16 2021

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-30008

Plaintiff-Appellee,

D.C. No. 4:20-cr-00006-BMM-1

v.

ANDREW MICHAEL GOMEZ,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Montana
Brian Morris, District Judge, Presiding

Submitted September 14, 2021**

Before: PAEZ, NGUYEN, and OWENS, Circuit Judges.

Andrew Michael Gomez appeals from the district court's judgment and challenges the 120-month mandatory minimum sentence imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and 846. We

* 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).

have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Gomez contends that his mandatory minimum sentence is substantively unreasonable because it is greater than necessary and conflicts with 18 U.S.C. § 3553(a). As he concedes, this contention is foreclosed. *See United States v. Wipf*, 620 F.3d 1168, 1170-71 (9th Cir. 2010) (§ 3553(a) does not authorize a district court to impose a sentence below the mandatory statutory minimum). Because Gomez has not shown that *Wipf* is “clearly irreconcilable” with intervening higher authority, we are bound to follow it. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc).

AFFIRMED.