

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 06 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FLORENTINO VILLEGAS-
DELGADILLO,

Defendant - Appellant.

No. 07-30283

D.C. No. CR-03-00109-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Submitted July 22, 2008**

Before: B. FLETCHER, THOMAS and WARDLAW, Circuit Judges.

Florentino Villegas-Delgadillo appeals from the 135-month sentence imposed following his guilty-plea conviction for conspiracy to possess with intent

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

to distribute methamphetamine and heroin, distribution of methamphetamine and heroin, and being a deported alien found in the United States, all in violation of 8 U.S.C. § 1326 and 21 U.S.C. §§ 841(a)(1) and 846. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Villegas-Delgadillo challenges the district court's application of a four-level aggravating role enhancement under U.S.S.G. § 3B1.1. The district court's four-level enhancement under U.S.S.G. § 3B1.1(a) was not clearly erroneous because the unchallenged evidence supports the district court's determination that Villegas-Delgadillo was an organizer or leader. *See United States v. Garcia*, 497 F.3d 964, 969-70 (9th Cir. 2007); *United States v. Avila*, 95 F.3d 887, 889 (9th Cir. 1996).

Villegas-Delgadillo contends that he is entitled to a limited remand for resentencing pursuant to *United States v. Ameline*, 409 F.3d 1073, 1074 (9th Cir. 2005) (en banc), because the district court sentenced him under the then-mandatory Guidelines. However, with the exception of a sentence exceeding the statutory maximum or resulting from "an incorrect application of the sentencing guidelines to which the defendant filed a proper and timely objection," Villegas-Delgadillo "knowingly and voluntarily" waived the right to appeal his sentence or "the manner in which the sentence was imposed." Villegas-Delgadillo's challenge to

the district court's treatment of the Guidelines as mandatory was not raised in the district court and is therefore precluded by the plea agreement. *See United States v. Cortez-Arias*, 425 F.3d 547, 547-48 (9th Cir. 2005), *amending* 415 F.3d 977 (9th Cir. 2005).

AFFIRMED.