

SEP 10 2008

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS ANTONIO BORBOA-
BUSTAMANTE,

Defendant - Appellant.

No. 06-10442

D.C. No. CR-05-00660-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted September 8, 2008**

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Jesus Antonio Borboa-Bustamante appeals from the 46-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 approximately 292 kilograms of marijuana, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(vii), and § 846, and possession with intent to distribute approximately 292 kilograms of marijuana, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(B). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Borboa-Bustamante contends that the district court erred when it denied his request for a minor role adjustment, pursuant to U.S.S.G. § 3B1.2. The district court did not abuse its discretion, given Borboa-Bustamante's conduct, the circumstances of his arrest, and the amount he was paid for his services. *See United States v. Davis*, 36 F.3d 1424, 1437 (9th Cir. 1994).

Borboa-Bustamante also contends that the district court treated the Sentencing Guidelines range as presumptively reasonable, provided an inadequate 18 U.S.C. § 3553(a) analysis, and failed to consider his departure arguments. The district court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 994-96 (9th Cir. 2008) (en banc).

AFFIRMED.