

DEC 29 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NOT FOR PUBLICATION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.

RAFAEL AYALA,

Defendant - Appellant.

No. 08-50065

D.C. No. CR-07-02637-LAB

MEMORANDUM*

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

Submitted December 17, 2008**

Before: GOODWIN, TROTT and RYMER, Circuit Judges.

Rafael Ayala appeals from the 57-month sentence imposed following his guilty-plea conviction for importation of cocaine, in violation of 21 U.S.C. §§ 952 and 960. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* 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).

Ayala contends that the district court erred by denying him a minor role adjustment under U.S.S.G. § 3B1.2 because it misinterpreted the Guidelines and improperly concluded that a courier convicted of importing drugs cannot qualify for a minor role reduction. We conclude that the district court did not misinterpret the Guidelines and did not clearly err in declining to apply a minor role adjustment. *See United States v. Rosales-Rodriguez*, 289 F.3d 1106, 1112 (9th Cir. 2002); *United States v. Davis*, 36 F.3d 1424, 1436-37 (9th Cir. 1994).

Ayala further contends that the sentence imposed was unreasonable because the district court relied on erroneous facts and imposed a sentence that was greater than necessary to achieve the sentencing goals. We conclude that the district court did not procedurally err, and that the sentence is substantively reasonable. *See Gall v. United States*, 128 S. Ct. 586, 596-97 (2007).

AFFIRMED.