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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>CESAR CARRILLO,</p> <p>Defendant - Appellant.</p>
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No. 07-10133

D.C. No. CR-05-00331-RCJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Robert C. Jones, District Judge, Presiding

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Cesar Carrillo appeals from the 126-month sentence imposed following his guilty-plea conviction for conspiracy to distribute a controlled substance, in

* 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).

violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(B)(viii) and 846. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Carrillo contends that his sentence is unreasonable because the district court improperly applied a two-level enhancement for possessing a dangerous weapon, pursuant to U.S.S.G. § 2D1.1(b)(1), and a two-level aggravating role enhancement, pursuant to U.S.S.G. § 3B1.1(c). We conclude that the district court did not clearly err by applying the enhancements. *See* U.S.S.G. § 1B1.3(a)(1)(B); *see also United States v. Garcia*, 909 F.2d 1346, 1349-50 (9th Cir. 1990); *see United States v. Maldonado*, 215 F.3d 1046, 1050-51 (9th Cir. 2000). Further, given the totality of the circumstances, Carrillo's below-Guidelines range sentence is not substantively unreasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Carrillo also contends that the district court violated his Sixth Amendment rights when it enhanced his sentence based on facts that were not alleged in the indictment, admitted, nor proven beyond a reasonable doubt. As Carrillo acknowledges, this contention is foreclosed. *See United States v. Booker*, 543 U.S. 220, 245 (2005); *United States v. Ingham*, 486 F.3d 1068, 1078 (9th Cir. 2007).

AFFIRMED.