

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 23 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PABLO DIAZ GUZMAN,

Defendant - Appellant.

No. 07-50416

D.C. No. CR-06-02290-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Pablo Diaz Guzman appeals from the 70-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, 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 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Guzman contends that the district court procedurally erred at sentencing by failing to consider the factors set forth in 18 U.S.C. § 3553(a) and by failing to provide a reasoned basis for the sentence imposed and a sufficient record regarding its application and interpretation of the Guidelines. We conclude that the district court did not procedurally err. *See Rita v. United States*, 127 S. Ct. 2456, 2468 (2007); *United States v. Carty*, 520 F.3d 984, 992 -993 (9th Cir. 2008) (en banc).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand with instructions that the district court delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b) because it is a sentence enhancement and not a separate punishable offense).

AFFIRMED; REMANDED to correct the judgment.