

JAN 26 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>COSME SANCHEZ-ESPINO,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 08-30092

D.C. No. 6:07-cr-00014-CCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, District Judge, Presiding

Submitted January 13, 2009**

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

Cosme Sanchez-Espino appeals from the 60-month sentence imposed following his guilty-plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326(a). 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).

Sanchez-Espino contends that the district court provided insufficient notice of its intent to sentence him above the Sentencing Guidelines range pursuant to Federal Rule of Criminal Procedure 32(h). This contention fails. The district court was not required to provide notice in this case. *See Irizarry v. United States*, 128 S. Ct. 2198, 2203-04 (2008). Moreover, the district court sent the parties written notice that it may sentence Sanchez-Espino above the Guidelines range because of the nature and circumstances of the offense and the history and characteristics of the defendant.

Sanchez-Espino also contends that the district court procedurally erred by failing to articulate how it arrived at his sentence and by incorrectly applying an upward departure pursuant to U.S.S.G. § 4A1.3. We conclude that the district court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 995 (9th Cir. 2008) (en banc).

AFFIRMED.