

MAR 27 2009

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NOT FOR PUBLICATION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.

ARTURO RUIZ-SERVIN, aka Mario
Dominquez-Perez,

Defendant - Appellant.

No. 08-50222

D.C. No. 3:07-cr-02557-WQH-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted March 18, 2009**

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

Arturo Ruiz-Servin appeals from the 57-month sentence imposed following his jury-trial 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(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Ruiz-Servin contends that the above-Guidelines range sentence imposed was unreasonable because the district court: (1) relied on a general policy objective rather than an individualized determination of the facts; (2) placed undue weight on his criminal history; and (3) failed to explain why it rejected his arguments for a lower sentence. We conclude that the district court did not procedurally err, and that the sentence imposed is substantively reasonable. *See Gall v. United States*, 128 S. Ct. 586, 596-98 (2007); *see also United States v. Perez-Perez*, 512 F.3d 514, 516-17 (9th Cir. 2008); *United States v. Mohamed*, 459 F.3d 979, 988-89 (9th Cir. 2006).

We remand to the district court with directions to delete from the judgment of conviction 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)).

AFFIRMED; REMANDED to correct judgment.