

MAY 26 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NOT FOR PUBLICATION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.

ANGEL JOSE BERMUDEZ,

Defendant - Appellant.

No. 08-50366

D.C. No. 3:08-cr-01191-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted May 12, 2009**

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Angel Jose Bermudez appeals from the 41-month sentence imposed following his guilty-plea conviction for the transportation of illegal aliens and

* 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).

aiding and abetting, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (v)(II). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Bermudez contends that the district court erred at sentencing by applying one part of the United States Sentencing Guidelines to increase his punishment on account of a kind of harm that already had been fully accounted for by the application of another part of the Guidelines. This contention is belied by the record. *See United States v. Archdale*, 229 F.3d 861, 869 (9th Cir. 2000). It was proper for the district court to consult the Sentencing Guidelines as well as the other factors set forth in 18 U.S.C. § 3553(a). *See United States v. Booker*, 543 U.S. 220, 259-60 (2005); *Cf. Rita v. United States*, 127 S. Ct. 2456, 2463-65 (2007) (recognizing that the Guidelines were designed to try to reflect the factors set forth in § 3553(a)).

Bermudez also contends that the district court erred when it denied him a downward departure for his willingness to accept a package plea agreement. We review the sentence for reasonableness. *See United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008). In light of the § 3553(a) factors and the totality of the circumstances, we conclude that the sentence was not unreasonable. *See Gall v. United States*, 128 S. Ct. 586, 596 (2007); *Booker*, 543 U.S. at 260-63; *cf. United States v. Marcial-Santiago*, 447 F.3d 715, 717-19 (9th Cir. 2006).

AFFIRMED.