

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 30 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS RODRIGUEZ-CADENA,

Defendant - Appellant.

No. 07-30455

D.C. No. CR-06-00459-GMK

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Oregon  
Garr M. King, District Judge, Presiding

Submitted June 16, 2009\*\*

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Jesus Rodriguez-Cadena appeals from the 37-month sentence imposed following his guilty-plea conviction for illegal reentry, in violation of 8 U.S.C.

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\* 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).

§ 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Rodriguez-Cadena contends the district court erred by relying on a state court minute order to determine that he was convicted of violating a statute that categorically qualifies as a drug trafficking offense, pursuant to U.S.S.G.

§ 2L1.2(b)(1)(B). This contention lacks merit. *See United States v. Snellenberger*, 548 F.3d 699, 702 (9th Cir. 2008) (en banc).

Rodriguez-Cadena further contends that his sentence is unreasonable because the district court failed to properly consider the factors set forth in 18 U.S.C. § 3553(a). We conclude that the district court did not procedurally err and that the sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38 (2007); *United States v. Carty*, 520 F.3d 984, 990-93 (9th Cir. 2008) (en banc).

Next, we decline Rodriguez-Cadena's request for a remand to make sure that the district court properly exercised its discretion in analyzing the § 3553(a) factors. *See Rita v. United States*, 551 U.S. 338, 356-59 (2007).

Finally, in accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b)(2).

*See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000)

(remanding sua sponte to delete the reference to § 1326(b)(2)).

**AFFIRMED; REMANDED to correct the judgment.**