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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>ARTEMIO TORRES-TORRES,</p> <p>Defendant - Appellant.</p>

No. 07-50188

D.C. No. CR-06-02004-MJL

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
M. James Lorenz, District Judge, Presiding

Submitted July 14, 2009**

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Artemio Torres-Torres appeals from the 41-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28

* 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).

U.S.C. § 1291, and we affirm.

Torres-Torres contends that the district court erroneously applied a 16-level enhancement based upon an “old” prior conviction that should not have been scored for purposes of criminal history, and failed to properly apply the § 3553(a) sentencing factors. The sentence imposed is substantively reasonable and procedurally sound. *Cf. United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1054-1058 (9th Cir. 2009); *see also Gall v. United States*, 128 S. Ct. 586, 596-97 (2007); *United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

Torres-Torres’ contention that using the same prior conviction for the sentencing enhancement and for calculating his criminal history score constitutes impermissible double counting is foreclosed. *See United States v. Garcia-Cardenas*, 555 F.3d 1049, 1050 (9th Cir. 2009) (per curiam).

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.