

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

SEP 23 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELIAS VELGARA-CHAVEZ,

Defendant - Appellant.

No. 08-10299

D.C. No. 2:07-CR-01315

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Susan R. Bolton, District Judge, Presiding

Argued and Submitted September 14, 2009  
San Francisco, California

Before: SCHROEDER, REINHARDT and HAWKINS, Circuit Judges.

Elias Velgara-Chavez appeals his conviction for attempted illegal reentry after deportation in violation of 8 U.S.C. § 1326(a), with a sentence enhancement

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

pursuant to § 1326(b)(2), and challenges his 51-month sentence as substantively and procedurally unreasonable. We affirm.

Velgara-Chavez contends that there was insufficient evidence that he had the specific intent to reenter the United States without the Attorney General's consent. *See United States v. Gracidas-Ulibarry*, 231 F.3d 1188, 1196 (9th Cir. 2000) (en banc) (holding that specific intent is an element of attempted illegal reentry).

We disagree. Most significantly, the government presented evidence that Velgara-Chavez admitted in a sworn statement that he attempted to enter the United States illegally. Additionally, the government offered evidence that two weeks prior to Velgara-Chavez's attempted reentry, Immigration and Customs Enforcement deported Velgara-Chavez and informed him that if he attempted to return to the United States without the Attorney General's consent, he would be subject to prosecution for a felony.

Velgara-Chavez also challenges his sentence. He first asserts that the district court committed procedural error by failing to consider the nature and circumstances of his offense. *See* 18 U.S.C. § 3553(a)(1). The record shows the contrary.

Velgara-Chavez next contends that his sentence is substantively unreasonable because it over-emphasizes his criminal history and fails to reflect the innocuous way in which he committed his offense. Given the totality of the

circumstances, including Velgara-Chavez's significant criminal history, we cannot conclude that a 51-month sentence is unreasonable.

**AFFIRMED.**