

SEP 30 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NOT FOR PUBLICATION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.

NATIVIDAD MEDINA-MARTINEZ,

Defendant - Appellant.

No. 08-10358

D.C. No. 3:08-CR-00016-LRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Larry R. Hicks, District Judge, Presiding

Submitted September 14, 2009**

Before: SILVERMAN, RAWLINSON, and CLIFTON, Circuit Judges.

Natividad Medina-Martinez appeals from the 70-month sentence imposed following his guilty-plea conviction for unlawful reentry by a deported alien, 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, and we affirm.

Medina-Martinez contends that the district court procedurally erred at sentencing by: (1) failing to consider all of the sentencing factors under 18 U.S.C. § 3553(a), including the need to avoid unwarranted sentencing disparities; and (2) failing to adequately explain the sentence. The record reflects that the district court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 992-93, 995-96 (9th Cir. 2008) (en banc).

As Medina-Martinez concedes, his argument that the district court violated his Fifth and Sixth Amendment rights by increasing his sentence beyond two years is foreclosed. *See Almendarez-Torres v. United States*, 523 U.S. 224 (1998); *United States v. Beltran-Munguia*, 489 F.3d 1042, 1052 (9th Cir. 2007).

AFFIRMED.