

OCT 21 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NOT FOR PUBLICATION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.

CARLOS DAVID MARTINEZ,

Defendant - Appellant.

No. 09-50064

D.C. No. 3:08-cr-03075-MJL

MEMORANDUM*

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

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Carlos David Martinez appeals from the 18-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C.

* 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).

§ 1291, and we affirm.

We reject the government's contention that this court lacks jurisdiction to review the denial of a downward departure. *See United States v. Dallman*, 533 F.3d 755, 760-61 (9th Cir. 2008).

Martinez contends that the district court procedurally erred by recognizing that a downward departure was warranted but then imposed a mid-range sentence. The district court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Martinez also contends that the district court imposed a substantively unreasonable sentence because it failed to give adequate weight and consideration to all of the 18 U.S.C. § 3553(a) sentencing factors, especially his extraordinary acceptance of responsibility. In light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, Martinez's sentence is not substantively unreasonable. *See Gall v. United States*, 128 S. Ct. 586, 600-02 (2007).

AFFIRMED.