

DEC 14 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NOT FOR PUBLICATION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.

JOSE ALBERTO TAPIA-HERNANDEZ,

Defendant - Appellant.

No. 06-10320

D.C. No. CR-05-02169-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Jose Alberto Tapia-Hernandez appeals from the 57-month sentence imposed following his guilty-plea conviction for illegal reentry 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.

Tapia-Hernandez contends that the district court erred by treating the Guidelines as presumptively reasonable in the absence of extraordinary factors to justify a downward variance. The district court did not procedurally err by concluding that a sentence below the Guidelines range was not warranted in light of the circumstances of the case. *See United States v. Carty*, 520 F.3d 984, 994-95 (9th Cir. 2008) (en banc).

AFFIRMED.