

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NOT FOR PUBLICATION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.

CARLOS MUNOZ-DURAN,

Defendant - Appellant.

No. 09-50095

D.C. No. 3:08-CR-03101-GT

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, District Judge, Presiding

Submitted November 17, 2009**

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

Carlos Munoz-Duran appeals from the 37-month sentence imposed following his guilty-plea conviction for attempted illegal reentry, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

* 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).

Munoz-Duran contends that the district court erred by applying an upward departure under U.S.S.G. § 4A1.3 based on his criminal history, and by failing to adequately consider his mitigating arguments, and that the resulting sentence is substantively unreasonable. The record reflects that the district court did not procedurally err in its calculation of the advisory sentencing Guideline range or consideration of the 18 U.S.C. § 3553(a) factors, and that the sentence is substantively reasonable in light of the totality of the circumstances. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc); *see also United States v. Higuera-Llamos*, 574 F.3d 1206, 1212 (9th Cir. 2009).

AFFIRMED.