

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NOT FOR PUBLICATION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.

MOISES VALVERDE-GARCIA,

Defendant - Appellant.

No. 09-50143

D.C. No. 3:08-CR-01454-JAH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted November 17, 2009**

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

Moises Valverde-Garcia appeals from the 24-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United

* 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).

States, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Valverde-Garcia contends that the district court procedurally erred by failing to consider all the 18 U.S.C. § 3553(a) factors and that his sentence was substantively unreasonable given that his prior felony convictions were for non-violent immigration offenses. Our review of the record indicates that the judge's § 3553(a) analysis was procedurally adequate under the circumstances. *See Rita v. United States*, 551 U.S. 338, 359 (2007); *United States v. Carty*, 520 F.3d 984, 995 (9th Cir. 2008) (en banc). Considering the totality of the circumstances, as well as the § 3553(a) factors, the district court's sentence was substantively reasonable. *Id.* at 993.

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to § 1326(b), and correct the judgment to reflect 8 U.S.C. § 1326(a) as the statute of conviction. *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED to correct the judgment.