

DEC 17 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NOT FOR PUBLICATION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.

SERGIO PEREZ-OCHOA, AKA Daniel
Perez-Soto,

Defendant - Appellant.

No. 09-50089

D.C. No. 3:08-CR-02589-LAB

MEMORANDUM*

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

Submitted November 17, 2009**

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

Sergio Perez-Ochoa appeals from the 48-month sentence imposed following his guilty-plea conviction for transporting illegal aliens and aiding and abetting, 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. § 1324(a)(1)(A)(ii) and (v)(II). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Perez-Ochoa contends that the district court erroneously imposed concurrent enhancements under U.S.S.G. §§ 2L1.1(b)(6) and 3C1.2 based on the same conduct. This contention is belied by the record. *See United States v. Dixon*, 201 F.3d 1223, 1234 (9th Cir. 2000).

Perez-Ochoa also contends that the district court procedurally erred by relying on clearly erroneous facts, failing to consider his mitigation arguments, and focusing unduly on the goals of protection of the public and deterrence. He also contends that his sentence is substantively unreasonable. The record reflects that the district court did not procedurally err and the sentence imposed is substantively reasonable in light of the totality of the circumstances. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

Finally, Perez-Ochoa contends that the district court violated his due process rights when it sentenced him based on unfounded speculation regarding his prior criminal history. This contention is belied by the record. *See United States v. Romero-Rendon*, 220 F.3d 1159, 1165 (9th Cir. 2000) (holding that an unchallenged presentence report is sufficient evidence to increase a defendant's sentence); *see also United States v. Robelo*, 596 F.2d 868, 870 (9th Cir. 1979) (holding that the

district court did not violate due process by basing its sentencing decision on reasonable inferences from the facts before it).

Perez-Ochoa's second motion for an extension of time to file the reply brief is granted.

AFFIRMED.