

JAN 07 2010

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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NOT FOR PUBLICATION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 SOTO-LOPEZ, AKA Carlos
Soto, AKA Manuel Urias-Castro, AKA
Carlos Mendoza-Camacho,

Defendant - Appellant.

No. 09-50027

D.C. No. 3:07-CR-03475-IEG

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Irma E. Gonzalez, Chief District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Carlos Soto-Lopez appeals from the 77-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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. We grant the parties' requests to take judicial notice of certain documents outside the district court record.

Soto-Lopez contends that the district court procedurally erred by failing to address adequately his argument that he was entitled to the 48-month sentence he would have received had his attorney not advised him to reject the government's "fast-track" offer. Our review of the record indicates that the judge adequately addressed this argument. *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).

Soto-Lopez also contends that the district court abused its discretion in imposing the 77-month sentence at the bottom of the Guidelines range rather than the 48-month sentence he would have received had he accepted the government's offer. Considering the totality of the circumstances, the district court's sentence was not substantively unreasonable. *See United States v. Vasquez-Landaver*, 527 F.3d 798, 804-05 (9th Cir. 2008) (district court did not abuse its discretion in rejecting defendant's request for 48-month "fast-track" sentence offered by government and rejected).

Finally, as Soto-Lopez concedes, his contention that the sentencing judge

violated the Fifth and Sixth Amendments by increasing his sentence pursuant to an aggravated felony finding is foreclosed. *See Almendarez-Torres v. United States*, 523 U.S. 224 (1998).

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). *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.