

JAN 11 2010

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NOT FOR PUBLICATION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 MARTINEZ-AGUINIGA,

Defendant - Appellant.

No. 09-50014

D.C. No. 3:07-CR-02444-BTM

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Barry T. Moskowitz, District Judge, Presiding

Submitted December 15, 2009**

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

Carlos Martinez-Aguiniga appeals from the 57-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 concludes this case is 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, and we affirm.

Martinez-Aguiniga contends that the sentence at the bottom of the guidelines range is substantively unreasonable in light of the factors under 18 U.S.C. § 3553(a), and because it is based on a 16-level enhancement he received under U.S.S.G. § 2L1.2(b)(1)(A) for a crime of violence he committed 23 years prior to his arrest in the instant case. The record reflects that the district court considered and rejected Martinez-Aguiniga's arguments regarding the staleness of his crime of violence conviction and gave thorough consideration to the § 3553(a) factors at sentencing. *Cf. United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1055-56 (9th Cir. 2009). Accordingly, and in light of the totality of the circumstances, the sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007); *United States v. Carty*, 520 F.3d 984, 991-93, 996 (9th Cir. 2008) (en banc).

AFFIRMED.