

JAN 26 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NOT FOR PUBLICATION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.

JOSE GUADALUPE AGUILAR,

Defendant - Appellant.

No. 09-30164

D.C. No. 2:07-CR-02091-WFN

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Wm. Fremming Nielsen, District Judge, Presiding

Submitted January 11, 2010\*\*

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Jose Guadalupe Aguilar appeals from the 115-month sentence imposed following his jury-verdict conviction for being a felon in possession of a firearm,

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\* 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).

in violation of 18 U.S.C. § 922(g)(1), and possession of body armor, in violation of 18 U.S.C. § 931(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Aguilar contends that the district court judge committed procedural error by relying on clearly erroneous facts at sentencing. The record reflects that the district court judge did not procedurally err. *See Gall v. United States*, 552 U.S. 38, 51 (2007) (stating that it is procedural error to select a sentence based on clearly erroneous facts).

Aguilar also contends that the sentence at the top of the Guidelines range was substantively unreasonable. However, the district court did not abuse its discretion in rejecting Aguilar's argument that he should receive some credit for acceptance of responsibility. *See id.* Considering the totality of the circumstances, the district court's sentence was not substantively unreasonable. *See id.*

**AFFIRMED.**