

JAN 26 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NOT FOR PUBLICATION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.

RUBEN PEREZ-CASTILLO,

Defendant - Appellant.

No. 09-50060

D.C. No. 3:08-cr-04440-LAB

MEMORANDUM*

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

Submitted January 11, 2010**

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

Ruben Perez-Castillo appeals from the 55-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. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

Perez-Castillo contends, and the government concedes, that his sentence should be vacated and remanded because he was denied his right of allocution at sentencing. The district court failed to accord Perez-Castillo the right to allocute at sentencing and “[w]e are not able to say that the district court could not have lowered [Perez-Castillo’s] sentence had he been given an opportunity to speak” thus, we vacate and remand for resentencing. *See United States v. Gunning*, 401 F.3d 1145, 1149 (9th Cir. 2005).

In light of this disposition, we decline to address Perez-Castillo’s argument that his sentence is substantively unreasonable.

Finally, we deny Perez-Castillo’s request for reassignment to a different district court judge. *See United States v. Rapal*, 146 F.3d 661, 665-66 (9th Cir. 1998).

SENTENCE VACATED and REMANDED.