

MAR 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NOT FOR PUBLICATION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.

LUCIO RIVERA PEREZ,

Defendant - Appellant.

No. 09-50123

D.C. No. 2:08-cr-01073-SVW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted March 16, 2010**

Before: SCHROEDER, PREGERSON, and RAWLINSON, Circuit Judges.

Lucio Rivera Perez appeals from his 60-month sentence imposed following his guilty-plea conviction for being an alien in possession of a firearm and

* 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).

ammunition, in violation of 18 U.S.C. § 922(g)(5). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Perez contends that the district court procedurally erred by, among other things, failing to address his mitigation arguments that he did not know that the firearm he possessed had an obliterated serial number, and that his criminality was caused by his alcoholism. He also contends that the district court did not adequately justify his above-Guidelines sentence. The record reflects that the district court listened to the parties' arguments and that it adequately explained the sentence. *See United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009).

Perez also contends that his sentence is substantively unreasonable. The record further reflects that, under the totality of the circumstances, Perez's sentence is not substantively unreasonable. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc); *see also Rita v. United States*, 551 U.S. 338 (2007).

AFFIRMED.