

APR 01 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NOT FOR PUBLICATION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.

ERNESTO SOTO-HERRERA,

Defendant - Appellant.

No. 08-10535

D.C. No. 4:08-CR-00567-JMR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John M. Roll, Chief District Judge, Presiding

Submitted March 16, 2010**

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

Ernesto Soto-Herrera appeals from the 56-month sentence imposed following his guilty-plea conviction for illegal reentry after deportation, 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. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Soto-Herrera contends that the district court procedurally erred by failing to consider the mitigating circumstances presented. He also contends that the district court imposed a substantively unreasonable sentence. The record indicates that the district court considered the defense's arguments in the course of determining Soto-Herrera's sentence and therefore did not procedurally err. *See Rita v. United States*, 551 U.S. 338, 356-59 (2007); *United States v. Carty*, 520 F.3d 984, 991-92, 995 (9th Cir. 2008) (en banc). Further, considering the totality of the circumstances, including the 18 U.S.C. § 3553(a) sentencing factors, the district court's sentence below the middle of the Guidelines range was substantively reasonable. *See Carty*, 520 F.3d at 993.

AFFIRMED.