

JUN 07 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NOT FOR PUBLICATION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.

JUAN ANGEL OSORIO-FUNEZ,

Defendant - Appellant.

No. 09-10297

D.C. No. 4:09-cr-00037-SBA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Saundra B. Armstrong, District Judge, Presiding

Submitted May 25, 2010**

Before: CANBY, THOMAS, and W. FLETCHER, Circuit Judges.

Juan Angel Osorio-Funez appeals from the 70-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 under 28 U.S.C. § 1291, and we affirm, but remand to correct the judgment.

Osorio-Funez contends that the district court procedurally erred by failing to consider the 18 U.S.C. § 3553(a) sentencing factors. The record indicates that the district court considered Osorio-Funez's arguments and the sentencing factors. *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).

Osorio-Funez also contends that his sentence is substantively unreasonable. In light of the totality of the circumstances, the district court's sentence at the low end of the Guidelines is substantively reasonable. *See Carty*, 520 F.3d at 993.

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to "8 U.S.C. § (a) and (b)" and replace it with "8 U.S.C. § 1326(a)." *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED to correct the judgment.