

JUN 10 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NOT FOR PUBLICATION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.

JOSE MARIA-JUAREZ,

Defendant - Appellant.

No. 09-10235

D.C. No. 2:08-cr-00061-FCD

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, District Judge, Presiding

Submitted May 25, 2010**

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

Jose Maria-Juarez appeals from the 70-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, 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(a). We have jurisdiction under 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Maria-Juarez contends that the district court procedurally erred at sentencing by (1) refusing to consider imposing a lower sentence in order to achieve parity with fast-track defendants; (2) treating the Sentencing Guidelines as mandatory; and (3) failing to adequately explain the sentence. The record indicates that the district court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 994-96 (9th Cir. 2008) (en banc); *see also United States v. Gonzalez-Zotelo*, 556 F.3d 736, 739-41 (9th Cir. 2009).

Maria-Juarez also contends that his sentence is substantively unreasonable in light of his mitigating personal circumstances and the age of the prior conviction that was the basis for a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii). The record reflects that the 70-month sentence is substantively reasonable in light of the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007); *cf. United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1055-56 (9th Cir. 2009).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand with instructions that the district court delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b). *See United States v.*

Herrera-Blanco, 232 F.3d 715, 719 (9th Cir. 2000) (remanding to delete the reference to § 1326(b) because it is a sentence enhancement and not a separate punishable offense).

Maria-Juarez's motion for judicial notice is denied.

AFFIRMED; REMANDED to correct the judgment.