

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NOT FOR PUBLICATION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.

JOSUE DANIEL DE PAZ,

Defendant - Appellant.

No. 09-50393

D.C. No. 3:08-CR-03235-TJW

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted May 25, 2010**

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

Josue Daniel De Paz appeals from the 51-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. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

De Paz contends that the district court procedurally erred by (1) imposing a sentence based solely on the advisory Sentencing Guidelines and failing to consider the factors set forth in 18 U.S.C. § 3553(a), including the need to impose a sentence sufficient, but not greater than necessary, and (2) failing to adequately explain his sentence. The record reflects that the district court provided a reasoned sentencing explanation and did not otherwise procedurally err. *See United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009).

De Paz also contends that his sentence is substantively unreasonable in light of his over-represented criminal history and other mitigating circumstances. The record reflects that, under the totality of the circumstances, De Paz's sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51-52 (2007); *see also United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

AFFIRMED.