

JUL 07 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

RAYMOND SALAZAR-AGUNDES

Defendant-Appellant.

No. 09-50359

D.C. No. 3:08-cr-04232-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Raymond Salzar-Agundes appeals from the 40-month sentenced imposed following his guilty-plea conviction for illegal re-entry of a deported alien, in

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case 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.

Salazar-Agundes contends that his sentence is unreasonable because the district court committed a procedural error in failing adequately to explain his 40-month sentence, which is below the Sentencing Guidelines range of 46-57 months. This contention is belied by the record, which contains an adequate explanation. *United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

Salazar-Agundes also contends that his sentence is substantively unreasonable in light of this Court's decision in *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1054-56 (9th Cir. 2009). Salazar-Agundes contends that under this Court's reasoning in *Amezcua-Vasquez*, his qualifying crime of violence conviction was too stale. Therefore, the district court should not have applied the 16-level sentencing enhancement under U.S.S.G. § 2L1.2(B)(1)(A)(ii). The record, however, reflects that the district court considered Salazar-Agundes' argument in this regard and found that the facts in the instant case justified a sentence below the Guidelines range. The district court nevertheless found the facts insufficient to justify Salazar-Agundes' request for a much lower sentence. Accordingly, under the totality of the circumstances, Salazar-Agundes' sentence is substantively reasonable. *Gall v. United States*, 552 U.S. 38, 53-60 (2007).

AFFIRMED.