

JUL 22 2010

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSE LUIS FRANCESCHY-ROBLES,</p> <p>Defendant - Appellant.</p>

No. 09-50342

D.C. No. 3:08-CR-01903-RTB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted June 29, 2010**

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

Jose Luis Franceschy-Robles appeals from the 77-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Franceschy-Robles contends that the district court procedurally erred at sentencing by failing to consider his arguments in support of a lower sentence. The record reflects that the district court adequately considered Franceschy-Robles' arguments and did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

Franceschy-Robles also contends that the within-Guidelines sentence is substantively unreasonable in light of the nature of the offense and because the Guidelines range is based on a 16-level enhancement that did not account for the nature of Franceschy-Robles' conduct in the underlying convictions. In light of the totality of the circumstances, the sentence at the bottom of the Guidelines range is substantively reasonable. *See id.* at 993.

Finally, Franceschy-Robles contends that the district court exhibited judicial bias against him, in violation of his due process rights, when it compared his prior conviction for attempted murder with a state case over which the district judge had previously presided. This contention lacks merit because Franceschy-Robles "has not demonstrated that his right to an impartial tribunal was violated by the court's remarks at sentencing." *See Lang v. Callahan*, 788 F.2d 1416, 1418-19 (9th Cir. 1986).

AFFIRMED.