

SEP 07 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NOT FOR PUBLICATION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>HERIBERTO VALENCIA,</p> <p>Defendant - Appellant.</p>
--

No. 09-10266

D.C. No. 2:08-cr-01408-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Submitted August 23, 2010**

Before: LEAVY, HAWKINS, and THOMAS, Circuit Judges.

Heriberto Valencia appeals from the 37-month sentence imposed following his guilty-plea conviction for reentry after deportation, in violation of 8 U.S.C.

§ 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Valencia contends that his above-guidelines sentence is substantively

* 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).

unreasonable given his background and criminal record. The record reflects the district court did not procedurally err, and the sentence imposed is substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Further, contrary to Valencia's contention, the prospective amendment to the sentencing guidelines does not assist his case. *See* U.S.S.G. § 2L1.2.

AFFIRMED.