

OCT 04 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NOT FOR PUBLICATION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.

FERNANDO HUERTA RICO,

Defendant - Appellant.

No. 06-50700

D.C. No. CR-06-00583-RGK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Fernando Huerta Rico appeals from the 84-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).

Rico contends that the district court erred by applying a drug trafficking enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A) because two prior felony convictions allegedly occurred when Rico was a juvenile. This contention fails because Rico admitted to having been convicted for the offenses as an adult. *See* U.S.S.G. § 2L1.2, cmt. n. 1(A)(iv); *see also United States v. Flores*, 172 F.3d 695, 700–01 (9th Cir. 1999) (defendant waived challenge by expressly agreeing to enhancement). Even if it was true that the offenses occurred when he was a juvenile, it is undisputed that he agreed that he was prosecuted as an adult.

Rico also contends that his sentence is substantively unreasonable. The record reflects that there was no procedural error and that, in light of the totality of the circumstances, the sentence within the Guidelines range is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

AFFIRMED.