

OCT 04 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NOT FOR PUBLICATION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.

JOAQUIN BASURTO-ESPINO,

Defendant - Appellant.

No. 10-30016

D.C. No. 2:09-cr-02046-EFS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted September 13, 2010**

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

Joaquin Basurto-Espino appeals from the 57-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).

Basurto-Espino contends that his sentence is substantively unreasonable. In light of the totality of the circumstances, the sentence, which is below the Guidelines range, is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

Basurto-Espino's argument that U.S.S.G. § 2L1.2 should not be used both to enhance his sentence and to calculate his criminal history has been rejected by this court. *See United States v. Garcia-Cardenas*, 555 F.3d 1049, 1050 (9th Cir. 2009).

Basurto-Espino concedes that his contention that the district court erroneously imposed a sentence above the statutory maximum is foreclosed. *See United States v. Bolanos-Hernandez*, 492 F.3d 1140, 1148 (9th Cir. 2007).

AFFIRMED.