

DEC 27 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NOT FOR PUBLICATION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.

ANTONIO BERUMEN-GURROLA,
AKA Antonio Beruman, AKA Antonio
Beruman-Gurrola,

Defendant - Appellant.

No. 09-10521

D.C. No. 4:09-cr-00494-DCB-
JCG-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted December 14, 2010 **

Before: GOODWIN, WALLACE, and THOMAS, Circuit Judges

Antonio Berumen-Gurrola, a federal prisoner, appeals the 57-month prison sentence imposed following his conviction for illegal reentry in violation of

* 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).

8 U.S.C. § 1326, arguing that it was substantively unreasonable. We have jurisdiction under 18 U.S.C. § 1291 and review the district court’s sentencing decision for abuse of discretion. *Gall v. United States*, 552 U.S. 38, 45–46, 128 S. Ct. 586, 594, 169 L. Ed. 2d 445 (2007). We affirm.

Berumen does not contest the guidelines range of 57 to 71 months but only the district court’s refusal to depart downward. Specifically, he argues that the district court’s application of a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A) due to a prior offense was not reasonable, relying on *United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1054–56 (9th Cir. 2009) (holding, on the facts, that enhancement was unreasonable because the prior conviction was stale and the defendant had no subsequent convictions for violent crimes).

Berumen’s prior offense underlying the enhancement is not stale. In fact, his parole for the offense does not expire until February 24, 2012.¹ The record reflects that the district court considered Berumen’s arguments and found that a downward departure was unwarranted. The district court did not abuse its discretion.

AFFIRMED.

¹In any event, unlike the defendant in *Amezcua-Vasquez*, 567 F.3d at 1056, Berumen’s prior conviction was not “unrepresentative of [his] characteristics during the past many years” leading up to his reentry conviction.