

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 04 2011

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EUSEBIO JIMENEZ-GARCIA,

Defendant - Appellant.

No. 08-50317

D.C. No. 5:07-cr-00167-VAP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Eusebio Jimenez-Garcia appeals from the 84-month sentence imposed following his conviction for illegal reentry after deportation, in violation of 8 U.S.C. §1326. We have jurisdiction under 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

* 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).

Jimenez-Garcia contends that his sentence within the Guidelines range is substantively unreasonable because, among other reasons, the district court focused too heavily on his criminal history. The district court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc). Moreover, in light of the totality of the circumstances, the sentence is substantively reasonable. *See id.*

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the reference to section 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to section 1326(b)).

AFFIRMED; REMANDED to correct judgment.