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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>SANTOS GARCIA-MENDOZA,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 10-10087

D.C. No. 3:09-cr-00805-WHA

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
William H. Alsup, District Judge, Presiding

Submitted December 14, 2010**

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

Santos Garcia-Mendoza appeals from the 28-month sentence imposed following his guilty-plea conviction for illegal re-entry following deportation, 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).

Garcia-Mendoza contends that the district court procedurally erred by imposing a sentence without properly considering his arguments with respect to the application of the 16-level enhancement at U.S.S.G. § 2L1.2(b)(1)(A) based upon his prior conviction for a crime of violence. The record reflects that the district court listened to and considered Garcia-Mendoza's arguments in this regard, but found the circumstances insufficient to warrant a sentence lower than the one imposed. *See United States v. Carty*, 520 F.3d 984, 995-96 (9th Cir. 2008) (en banc); *see also United States v. Ruiz-Chairez*, 493 F.3d 1089, 1091 (9th Cir. 2007).

Garcia-Mendoza also contends that the sentence imposed is substantively unreasonable in light of the significant mitigating factors surrounding his prior conviction and personal circumstances. Under the totality of the circumstances, the below-Guidelines sentence is substantively reasonable. *See Carty*, 520 F.3d at 991-93; *Gall v. United States*, 552 U.S. 38, 51-52 (2007).

AFFIRMED.