

FEB 17 2011

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NOT FOR PUBLICATION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.

JESUS GARCIA-FERNANDEZ,

Defendant - Appellant.

No. 10-10194

D.C. No. 4:07-cr-02042-FRZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Jesus Garcia-Fernandez appeals from the 42-month sentence imposed following his guilty-plea conviction for attempted re-entry after deportation, in

* 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).

violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Garcia-Fernandez contends that the district court erred in applying a 16-level “crime of violence” enhancement under U.S.S.G. § 2L1.2(b)(1)(a)(ii), based on his prior robbery conviction, in violation of California Penal Code §§ 211 and 212.5(c). The district court did not err. *See United States v. Becerill-Lopez*, 541 F.3d 881, 890-93 (9th Cir. 2008) (holding that a conviction under California Penal Code § 211 is categorically a “crime of violence” under the Guidelines). Moreover, even if the district court had erred, Garcia-Fernandez has not demonstrated that his substantial rights may have been affected. *See United States v. Waknine*, 543 F.3d 546, 552 (9th Cir. 2008).

AFFIRMED.