

FEB 22 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NOT FOR PUBLICATION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.

ARTURO TOSCANO-VILLASENOR,

Defendant - Appellant.

No. 10-50218

D.C. No. 3:09-cr-03434-L

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
M. James Lorenz, District Judge, Presiding

Submitted February 15, 2011**

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

Arturo Toscano-Villasenor appeals from the 57-month sentence imposed following his guilty-plea conviction for attempted entry after 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).

Toscano-Villasenor contends that the district court erred when it applied a 16-level enhancement, pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(ii), because his prior conviction for inflicting corporal injury on a spouse or co-habitant, in violation of section 273.5 of the California Penal Code, does not qualify as a crime of violence. This contention is foreclosed by *United States v. Laurico-Yeno*, 590 F.3d 818, 823 (9th Cir. 2010).

Toscano-Villasenor further contends that the district court procedurally erred by treating the Sentencing Guidelines as presumptively reasonable. The record reflects that the district court did not so err. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc).

Toscano-Villasenor also contends that the district court imposed a substantively unreasonable sentence that was greater than necessary to fulfill the purposes of 18 U.S.C. § 3553(a). In light of the totality of the circumstances and the section 3553(a) factors, the sentence at the bottom of the Guidelines range is substantively reasonable. *See Carty*, 520 F.3d at 993.

AFFIRMED.