

FEB 23 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NOT FOR PUBLICATION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.

GERARDO ANTONIO CAISHPAL-
HERNANDEZ,

Defendant - Appellant.

No. 10-10239

D.C. No. 2:09-cr-00376-MCE

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England Jr., District Judge, Presiding

Submitted February 15, 2011**

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

Gerardo Antonio Caishpal-Hernandez appeals from the 70-month sentence imposed following his guilty-plea conviction for being a deported alien found 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).

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

Caishpal-Hernandez contends that the district court procedurally erred by failing to explain sufficiently the sentence imposed and to address the arguments he presented for a below-Guidelines sentence. The record reflects that the district court provided a reasoned explanation for the sentence and adequately addressed Caishpal-Hernandez's arguments in mitigation to allow for meaningful appellate review. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

Caishpal-Hernandez also contends that his sentence is substantively unreasonable because it is exceptionally harsh relative to other individuals convicted of illegal reentry and was imposed to discourage reentry defendants from exercising their constitutional rights. In light of the totality of the circumstances and the factors set forth in 18 U.S.C. § 3553(a), the district court's sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Carty*, 520 F.3d 984, 993-94 (9th Cir. 2008) (en banc). Moreover, nothing in the record suggests that the district court imposed the sentence as punishment for Caishpal-Hernandez's decision to reject the proposed fast-track

plea agreement. *See United States v. Vasquez-Landaver*, 527 F.3d 798, 805-06 (9th Cir. 2009).

AFFIRMED.