

MAR 14 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NOT FOR PUBLICATION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.

EFREN RIVERA TREJO,

Defendant - Appellant.

No. 10-50101

D.C. No. 5:09-cr-00111-VAP

MEMORANDUM*

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

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Efren Rivera Trejo appeals from the 60-month sentence imposed following his guilty-plea conviction for being an illegal alien found in the United States 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).

Trejo contends that the district court procedurally erred by relying on a clearly erroneous fact at sentencing. Specifically, he contends that the district court sentenced him based on the mistaken belief that his inheritance was not guaranteed. This contention is belied by the record. *See United States v. Ressam*, 629 F.3d 793, 825 (9th Cir. 2010) (a finding of fact is clearly erroneous if we have a definite and firm conviction that a mistake has been committed); *see also Gall v. United States*, 552 U.S. 38, 51 (2007) (a district court commits procedural error by “selecting a sentence based on clearly erroneous facts”).

He further contends that his below-Guideline sentence is substantively unreasonable. The record reflects that the sentence imposed is substantively reasonable in light of the totality of the circumstances and the factors set forth in 18 U.S.C. § 3553(a). *See Gall*, 552 U.S. at 51-52.

AFFIRMED.