

MAR 15 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>CHRISTOPHER JAMES WEICK,</p> <p>Defendant - Appellant.</p>

No. 10-50322

D.C. No. 3:09-cr-04635-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted March 8, 2011**

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

Christopher James Weick appeals from the 15-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326(a). 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).

Weick contends that the district court erred by imposing a 12-level upward adjustment based on a prior felony drug trafficking offense, because the evidence indicated that he served no prison or jail time for that offense. The only evidence offered to support this contention is Weick's own statements made during allocution. The district court did not err, let alone plainly err, by relying on the presentence report and the government's sentencing documents to conclude that Weick served some time in custody for this conviction. *See United States v. Marin-Cuevas*, 147 F.3d 889, 894-95 (9th Cir. 1998).

The record reflects that the district court did not otherwise procedurally err, and the below-Guidelines sentence is substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

AFFIRMED.