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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NOT FOR PUBLICATION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.

FERNANDO SILVA-LOPEZ,

Defendant - Appellant.

No. 09-50510

D.C. No. 3:08-cr-02866-JLS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Janis L. Sammartino, District Judge, Presiding

Submitted May 24, 2011**

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

Fernando Silva-Lopez appeals from the 55-month sentence imposed following his bench-trial 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).

Silva-Lopez contends that the district court procedurally erred by failing to address his mitigating arguments and for not articulating a rationale for its sentencing decision. The record reflects that the district court considered Silva-Lopez's arguments in mitigation, but found the circumstances insufficient to warrant a sentence below the Guidelines range. *See United States v. Stoterau*, 524 F.3d 988, 999-1000 (9th Cir. 2008). The district court provided an adequate explanation for the sentence imposed, and did not otherwise procedurally err. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc). Moreover, the sentence in the middle of the Guidelines range is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors, and under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Silva-Lopez's contention regarding the application of a 16-level enhancement for a prior conviction for a crime of violence is foreclosed. *See United States v. Laurico-Yeno*, 590 F.3d 818, 822-23 (9th Cir. 2010).

AFFIRMED.