

JUN 28 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

HUGO CRUZ,

Defendant - Appellant.

No. 10-50385

D.C. No. 3:09-cr-03725-L

MEMORANDUM\*

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

Submitted June 15, 2011\*\*

Before: CANBY, O'SCANNLAIN, and FISHER, Circuit Judges.

Hugo Cruz appeals from the 57-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. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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\* 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).

Cruz contends that the district court erred when it imposed a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii), based on his prior conviction for inflicting corporal injury on a spouse/cohabitant partner, in violation of California Penal Code § 273.5. The record reflects that the district court properly applied the enhancement after determining that the conviction was a felony and a crime of violence. *See United States v. Laurico-Yeno*, 590 F.3d 818, 823 (9th Cir. 2010); *United States v. Pimentel-Flores*, 339 F.3d 959, 963 (9th Cir. 2003) (defining “felony” under U.S.S.G. § 2L1.2 and holding that a “crime of violence” need only be a felony as defined by the Guidelines for purposes of the 16-level enhancement).

Cruz further contends that the sentence is unreasonable because the district court failed to properly consider the individualized facts of his case. This contention is belied by the record, which reflects that the district court adequately considered the factors under 18 U.S.C. § 3553(a), including the mitigating factors presented by Cruz. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc). Moreover, the sentence at the bottom of the Guidelines range is substantively reasonable. *See id.* at 993.

**AFFIRMED.**