

JUN 29 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NOT FOR PUBLICATION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.

JAIME GARCIA-HERRERA, a.k.a. Cobra
Barrioquatro, a.k.a. Miguel Lardoguri-
Gonzales,

Defendant - Appellant.

No. 10-10188

D.C. No. 2:09-cr-01090-GMS

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
G. Murray Snow, District Judge, Presiding

Submitted June 15, 2011**

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

Jaime Garcia-Herrera appeals from the 50-month sentence imposed following his guilty-plea conviction for re-entry of removed alien, in violation of

* 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).

8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Garcia-Herrera contends that the district court procedurally erred (1) by failing to consider his argument that the sentencing enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(i) lacks an empirical basis or considered rationale and is not an accurate measure of the gravity of the underlying offense; and (2) by failing to explain why it selected his sentence. We review for plain error, *see United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008), and affirm because Garcia-Herrera has not established any error by the district court, *see id.* at 761-62. The record shows that the court heard and considered all of Garcia-Herrera's arguments and properly explained its rationale for selecting the sentence. *See United States v. Amezcua-Vasquez*, 567 F.3d 1050, 1053-54 (9th Cir. 2009).

Garcia-Herrera also contends that the sentence is substantively unreasonable. In light of the totality of the circumstances and the 18 U.S.C. § 3553(a) sentencing factors, the below-Guidelines sentence was not substantively unreasonable. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108-09 (9th Cir. 2010).

AFFIRMED.