

SEP 02 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NOT FOR PUBLICATION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.

JOSE ANGEL TORRES-BOBADILLA,

Defendant - Appellant.

No. 10-50356

D.C. No. 3:09-cr-02700-JLS-1

MEMORANDUM*

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

Submitted August 31, 2011**
Pasadena, California

Before: ALARCÓN, O’SCANNLAIN, and SILVERMAN, Circuit Judges.

Appellant Jose Torres-Bobadilla argues that his indictment was insufficient.

Under Federal Rule of Criminal Procedure 7(c)(1), an indictment must be a “plain,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

concise and definite written statement of the essential facts constituting the offense charged.” A legally sufficient indictment is one that “state[s] the elements of the offense charged with sufficient clarity to apprise a defendant of the charge against which he must defend and to enable him to plead double jeopardy.” *United States v. Hinton*, 222 F.3d 664, 672 (9th Cir. 2000). When “read in its entirety and construed in accord with common sense,” *United States v. Alber*, 56 F.3d 1106, 1111 (9th Cir. 1995), the indictment in this case put the appellant on notice of the offense charged and was not fairly interpretable in the disjunctive. Accordingly, the indictment was legally sufficient.

The appellant also argues that his seventy-month prison sentence was substantively unreasonable. The district court did not abuse its discretion when it imposed a within-Guidelines sentence that was amply justified by the factors listed at 18 U.S.C. § 3553(a) in light of the appellant’s criminal record and recent frequent reentries. *See United States v. Carty*, 520 F.3d 984, 994 (9th Cir. 2008) (en banc). All of the appellant’s contentions to the contrary are without merit.

AFFIRMED.