

OCT 4 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NOT FOR PUBLICATION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.

JOSE GONZALEZ-GUZMAN, a.k.a. Joe
Gonzalez-Guzman,

Defendant - Appellant.

No. 10-10573

D.C. No. 2:10-cr-00069-KJD

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted September 27, 2011**

Before: HAWKINS, SILVERMAN, and W. FLETCHER, Circuit Judges.

Jose Gonzalez-Guzman appeals from the 46-month sentence imposed following his guilty-plea conviction for being a deported alien found unlawfully in

* 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).

the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Gonzalez-Guzman contends that his sentence is substantively unreasonable because his prior conviction was stale and because the district court did not adjust his sentence downward for cultural assimilation or based on his particular history and characteristics. In light of the 18 U.S.C. § 3553(a) sentencing factors and considering the totality of the circumstances, including the district court's concern about the seriousness of Gonzalez-Guzman's criminal history, the within-Guidelines sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Valencia-Barragan*, 608 F.3d 1103, 1108-09 (9th Cir. 2010).

AFFIRMED.