

OCT 5 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>RODRIGO ESCALANTE-CARRILLO,</p> <p>Defendant - Appellant.</p> |
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No. 09-10406

D.C. No. 2:09-cr-00676-FJM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frederick J. Martone, District Judge, Presiding

Submitted September 27, 2011**

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

Rodrigo Escalante-Carrillo appeals from the 57-month sentence imposed following his conviction for re-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).

Escalante-Carrillo contends that the district court procedurally erred by failing adequately to discuss the 18 U.S.C. § 3553(a) sentencing factors. The record reflects that contrary to his contention, the district court did not plainly err. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc); *see also United States v. Lindsey*, 634 F.3d 541, 550 (9th Cir. 2011).

Escalante-Carrillo also contends that his sentence is substantively unreasonable. Specifically, he contends that cultural assimilation provides a basis for a below-Guidelines sentence. In light of the totality of the circumstances and the section 3553(a) sentencing factors, the sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.