

OCT 26 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NOT FOR PUBLICATION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.

FRANCISCO FLORES-BABICHI,

Defendant - Appellant.

No. 10-10345

D.C. No. 4:08-cr-00274-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted October 25, 2011**

Before: TROTT, GOULD, and RAWLINSON, Circuit Judges.

Francisco Flores-Babichi appeals from the 77-month sentence imposed following remand for resentencing. 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).

Flores-Babichi contends that his sentence is substantively unreasonable under *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir. 2009), given the staleness of his prior conviction, and his alleged cultural assimilation. The record reflects that the sentence imposed is substantively reasonable in light of the totality of the circumstances and the sentencing factors set forth in 18 U.S.C. § 3553(a). 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) (district court did not abuse its discretion in applying 16-level enhancement where § 3553(a) factors supported within-Guidelines sentence).

AFFIRMED.