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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>GILBERTO SANCHEZ-MONTANO,</p> <p>Defendant - Appellant.</p>
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No. 11-50011

D.C. No. 3:09-cr-04119-WQH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Submitted November 8, 2011**

Before: O'SCANNLAIN, TASHIMA, and GRABER, Circuit Judges.

Gilberto Sanchez-Montano appeals from his jury-trial conviction and 48-month sentence for being a deported alien found in the United States, 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).

Sanchez-Montano contends that his sentence is substantively unreasonable because the district court failed to account for the staleness of his prior felony conviction that triggered a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A). This contention lacks merit. The record reflects that the district court considered the age of the conviction, in conjunction with the 18 U.S.C. § 3553(a) sentencing factors, prior to granting a downward variance from the adjusted Guidelines range. The sentence is substantively reasonable under the totality of the circumstances and in light of the § 3553(a) sentencing factors. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Sanchez-Montano's contention that his Sixth Amendment right to confrontation was violated by the admission of a warrant of removal is foreclosed. *See United States v. Orozco-Acosta*, 607 F.3d 1156, 1164 (9th Cir. 2010).

AFFIRMED.