

DEC 27 2011

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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NOT FOR PUBLICATION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>RUBEN PEREZ-CARDENAS,</p> <p>Defendant - Appellant.</p>
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No. 11-10150

D.C. No. 4:10-cr-01467

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David S. Doty, District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

Ruben Perez-Cardenas appeals from the 63-month sentence imposed following his guilty-plea 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).

Perez-Cardenas contends that the district court procedurally erred by failing to consider his arguments for a lesser sentence. The record belies Perez-Cardenas's contention. The district court listened to his arguments and rejected them. *See United States v. Rita*, 551 U.S. 338, 358-59 (2007). Accordingly, the district court did not commit plain error. *See United States v. Ameline*, 409 F.3d 1073, 1078 (9th Cir. 2005) (en banc).

Perez-Cardenas also contends that his sentence is substantively unreasonable. In light of the totality of the circumstances and the sentencing factors set forth in 18 U.S.C. § 3553(a), the sentence at the low-end of the Guidelines range was reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Finally, Perez-Cardenas concedes that his contention that his prior conviction under California Penal Code § 245(a)(1) is not a crime of violence subject to a sixteen-level enhancement is foreclosed by *United States v. Grajeda*, 581 F.3d 1186 (9th Cir. 2009).

AFFIRMED.