

JAN 20 2012

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NOT FOR PUBLICATION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.

JUAN MIGUEL MENCHACO-LOPEZ,

Defendant - Appellant.

No. 11-50120

D.C. No. 3:10-cr-04782-WQH

MEMORANDUM*

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

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

Juan Miguel Menchaco-Lopez appeals from the 36-month sentence imposed following his guilty-plea conviction 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).

Menchaco-Lopez contends that the district court procedurally erred by failing to address his policy challenge to the illegal reentry Guideline requiring a sixteen-level enhancement for certain prior convictions, and that the sentence imposed is substantively unreasonable. The district court did not procedurally err, as the record reflects that it considered Menchaco-Lopez's arguments before imposing a sentence that was 21 months below the advisory Guidelines range, and found the circumstances insufficient to justify a sentence lower than the one imposed. *See United States v. Ayala-Nicanor*, 659 F.3d 744, 752-53 (9th Cir. 2011). Further, the sentence below the Guidelines range is substantively reasonable under the totality of the circumstances and in light of the sentencing factors set forth in 18 U.S.C. § 3553(a). *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.