

JAN 27 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NOT FOR PUBLICATION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-MANUEL GUTIERREZ-PINEDA,

Defendant - Appellant.

No. 11-10126

D.C. No. 4:10-cr-00879-DCB

MEMORANDUM*

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

Submitted January 17, 2012**

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

Juan-Manuel Gutierrez-Pineda appeals from the 51-month sentence imposed following his conviction for reentry 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. Appellant. P. 34(a)(2).

Gutierrez-Pineda contends that the district court procedurally erred by failing to appreciate its discretion, under *Kimbrough v. United States*, 552 U.S. 85 (2007), to deviate from the advisory sentencing Guidelines based on policy differences with the Guidelines, and by failing to adequately address Gutierrez-Pineda's objections to the sixteen-level sentencing enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A). These contentions are belied by the record.

Gutierrez-Pineda also contends that the sentence is substantively unreasonable under *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir. 2009), because the sentence does not adequately account for the age of his prior convictions, his individual circumstances, and an amendment to the Guidelines that had not yet been adopted. 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); *United States v. Ruiz-Apolonio*, 657 F.3d 907, 917-18 (district court not required to consider Guidelines amendment that has been promulgated but not yet adopted).

AFFIRMED.