

APR 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NOT FOR PUBLICATION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.

GONZALO CESAR AGUILAR-
MARTINEZ,

Defendant - Appellant.

No. 11-50397

D.C. No. 3:11-cr-02362-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted April 17, 2012**

Before: LEAVY, PAEZ, and BEA, Circuit Judges.

Gonzalo Cesar Aguilar-Martinez appeals from the 12-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

* 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).

U.S.C. § 1291, and we affirm.

Aguilar-Martinez contends that the district court procedurally erred by failing to: (i) use the Guidelines range as a starting point for sentencing, (ii) explain adequately the reasons for imposing an above-Guidelines sentence; and (iii) consider the 18 U.S.C. § 3553(a) sentencing factors other than the need to protect the public. The record belies these contentions. The district court determined the correct Guidelines range, listened to Aguilar-Martinez's mitigating arguments, considered the section 3553(a) factors, and sufficiently explained the sentence imposed. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

Aguilar-Martinez next contends that his sentence is substantively unreasonable. The sentence imposed is substantively reasonable in light of the totality of the circumstances and the sentencing factors set forth in section 3553(a). *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.