

JUL 19 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NOT FOR PUBLICATION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.

NOE MACIAS-ARIAS,

Defendant - Appellant.

No. 11-50449

D.C. No. 3:11-cr-02747-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Noe Macias-Arias appeals from the 42-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Macias-Arias contends that the district court procedurally erred by: (1)

* 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).

giving excessive weight to deterrence to the exclusion of other 18 U.S.C. § 3553(a) sentencing factors; (2) using an incorrect legal standard to determine the extent of the variance; and (3) failing to explain adequately the basis for the upward variance and why a 42-month sentence is necessary. The record belies these contentions. The district court considered and discussed the advisory Guidelines range and the section 3553(a) sentencing factors, and explained at length the reasons for the variance and the sentence.

Macias-Arias also contends that his sentence is substantively unreasonable because it is greater than necessary to achieve the section 3553(a) sentencing objectives. The record reflects that, under 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).

AFFIRMED.