

JUL 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NOT FOR PUBLICATION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.

RAMON GUTIERREZ-PEREZ,

Defendant - Appellant.

No. 11-50429

D.C. No. 3:11-cr-02954-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.

Ramon Gutierrez-Perez appeals from the 30-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.

* 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).

§ 1291, and we affirm.

Gutierrez-Perez contends that the district court procedurally erred by failing to: (i) use the Guidelines range as a starting point for sentencing and keep the Guidelines in mind during sentencing, (ii) consider the 18 U.S.C. § 3553(a) factors other than deterrence, and (iii) explain the extent of the upward variance. The record belies these contentions. The district court determined the correct Guidelines range, listened to Gutierrez-Perez'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).

Gutierrez-Perez also contends that his sentence is substantively unreasonable. In light of the totality of the circumstances and the section 3553(a) sentencing factors, particularly the need for deterrence, the sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.