

SEP 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NOT FOR PUBLICATION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.

MARCELO HERNANDEZ-ROJAS,

Defendant - Appellant.

Nos. 11-30306

11-30308

D.C. Nos. 3:09-cr-00455-HA

3:03-cr-00217-HA

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Ancer L. Haggerty, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

In these consolidated appeals, Marcelo Hernandez-Rojas appeals from the 37-month sentence imposed following his jury-trial conviction for illegal reentry, in violation of 8 U.S.C. § 1326, and from the 24-month consecutive sentence

* 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).

imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm but remand to the district court to correct a clerical error in the judgment in case number 11-30306.

Hernandez-Rojas contends that the district court procedurally erred by placing undue emphasis on the Sentencing Guidelines, and by failing adequately to consider his mitigating arguments. The district court listened to Hernandez-Rojas's mitigating arguments, heard testimony from an expert witness, and then granted a ten-level variance below the advisory Guidelines range. The court did not procedurally err.

Hernandez-Rojas also contends that his sentence is substantively unreasonable. In light of the totality of the circumstances, the sentence imposed, including the 24-month consecutive revocation sentence, is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

We remand to the district court with instructions to amend the judgment in case number 11-30306 to delete the incorrect reference to 8 U.S.C. § 1325(a)(1) and replace it with 8 U.S.C. § 1326(a).

AFFIRMED; REMANDED to correct the judgment in case number 11-30306.