

SEP 21 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSE JESUS CORTEZ,</p> <p>Defendant - Appellant.</p>
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No. 11-50531

D.C. No. 3:10-cr-00257-BEN

MEMORANDUM\*

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

Submitted September 10, 2012\*\*

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

Jose Jesus Cortez appeals from the 77-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.

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\* 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).

Cortez contends that his sentence is substantively unreasonable. He argues that the district court should have granted a downward departure because the Guidelines range overrepresents his criminal history and because his prior felony conviction, which triggered a 16-level enhancement under U.S.S.G.

§ 2L1.2(b)(1)(A), is stale. The sentence at the bottom of the Guidelines range is substantively reasonable in light of the totality of the circumstances and the sentencing factors set forth in 18 U.S.C. § 3553(a). *See Gall v. United States*, 552 U.S. 38, 51, (2007); *United States v. Tankersley*, 537 F.3d 1100, 1113 (9th Cir. 2008) (“After *Booker*, the scheme of downward and upward departures has been replaced by the requirement that judges impose a reasonable sentence.”).

**AFFIRMED.**