

SEP 24 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NOT FOR PUBLICATION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.

ALFONSO CRUZ-GREGORIO,

Defendant - Appellant.

No. 12-50087

D.C. No. 3:11-cr-04995-LAB

MEMORANDUM*

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

Submitted September 10, 2012**

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

Alfonso Cruz-Gregorio appeals from the 30-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

* 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).

we affirm.

Cruz-Gregorio contends that the district court procedurally erred by failing to consider the 18 U.S.C. § 3553(a) sentencing factors and by failing to explain why a 14-month upward variance was necessary. This contention is without merit as the record reflects that the court reviewed all of the evidence submitted, listened to the mitigating arguments, and considered the section 3553(a) sentencing factors. Furthermore, the court explained that it was basing the sentence on the need to protect the public and afford adequate deterrence. *See* 18 U.S.C. § 3553(a).

Cruz-Gregorio next contends that his sentence is substantively unreasonable. Under the totality of the circumstances, including Cruz-Gregorio's criminal history and ten previous deportations, the sentence is substantively reasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.