

OCT 16 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NOT FOR PUBLICATION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.

ROSARIO RODRIGUEZ-PORTILLO,

Defendant - Appellant.

No. 12-50071

D.C. No. 3:11-cr-04475-BEN

MEMORANDUM*

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

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Rosario Rodriguez-Portillo appeals from the 24-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.

Rodriguez-Portillo contends that the district court procedurally erred by (1) failing to use the Guidelines sentencing range as a starting point, (2) failing to keep the Guidelines range in mind during sentencing, and (3) relying on deterrence and the need to protect the public to the exclusion of other 18 U.S.C. § 3553(a) factors. The record does not support these contentions. The district court determined the correct Guidelines sentencing range, listened to Rodriguez-Portillo's mitigating arguments, considered the section 3553(a) factors, and sufficiently explained its reasons for imposing an above-Guidelines sentence. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

Rodriguez-Portillo also contends that his sentence is substantively unreasonable. In light of 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.