

NOV 19 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NOT FOR PUBLICATION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.

EDUARDO ROBERTO BITIA LOPEZ,
AKA Eduardo Roberto Bitia, AKA
Manuel Corado Lopez,

Defendant - Appellant.

No. 12-50028

D.C. No. 2:11-cr-00333-ABC-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Audrey B. Collins, District Judge, Presiding

Submitted November 13, 2012 **

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Eduardo Lopez appeals the 73-month sentence imposed following his guilty plea to being a deported alien found in the United States in violation of 8 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).

1326. We have jurisdiction under 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291, and we affirm.

Because Lopez failed to object to the district court's alleged procedural errors at sentencing, we review for plain error. *United States v. Sylvester Norman Knows His Gun, III*, 438 F.3d 913, 918 (9th Cir. 2005). Contrary to Lopez's assertion, the district court did not treat the Sentencing Guidelines as establishing a presumptive sentence, but rather, properly treated the Sentencing Guidelines as advisory, and properly considered the § 3553(a) sentencing factors. *See Gall v. United States*, 552 U.S. 38, 50 n.6 (2007).

We review the substantive reasonableness of a sentence for abuse of discretion. *United States v. Autery*, 555 F.3d 864, 871 (9th Cir. 2008). When a district court properly applies the Sentencing Guidelines, “it is probable that the sentence is reasonable.” *United States v. Carty*, 520 F.3d 984, 994 (9th Cir. 2008) (en banc) (quoting *Rita v. United States*, 551 U.S. 338, 551 (2007)). Here, the district court properly applied the Guidelines and imposed a sentence at the lower end of the applicable Guidelines range based on a reasonable application of the § 3553(a) factors. The district court also acted within its discretion in denying Lopez a downward departure based on his health problems. *See e.g. United States v.*

Tadeo, 222 F.3d 623, 627 (9th Cir. 2000). We conclude that the sentence imposed by the district court was substantively reasonable.

AFFIRMED.