

JUN 13 2013

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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NOT FOR PUBLICATION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 style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>FILOMENO ULLOA PONCE,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 12-10409

D.C. No. 2:11-cr-00340-JAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted June 10, 2013**

Before: HAWKINS, McKEOWN, and BERZON, Circuit Judges.

Filomeno Ulloa Ponce appeals from the district court’s judgment and challenges the 41-month sentence imposed following his guilty-plea conviction for being a felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1).

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Ulloa Ponce contends that his sentence is substantively unreasonable because the district court failed to grant a departure on the ground that his criminal history category was overstated. The district court did not abuse its discretion in imposing Ulloa Ponce's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence at the bottom of the Guidelines range is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including the offense conduct and Ulloa Ponce's extensive criminal history, which included seven felony convictions. *See id.*

AFFIRMED.