

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 01 2013

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ROBERTO HERNANDEZ GUZMAN,
AKA Jesus Delgado, AKA Jesus Rodolfo
Salas Delgado, AKA Regino Delgado,
AKA Rodolfo Salas Delgado, AKA Jose
Marin Fregoso, AKA Jesus Lucas, AKA
Martin Hernandez Morales, AKA Jesus
Rodolfo Salas, AKA Jesus Rodolfo Lucas
Salas, AKA Rodolfo Jesus Salas,

Defendant - Appellant.

No. 12-50529

D.C. No. 2:12-cr-00584-MWF-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Argued and Submitted October 11, 2013
Pasadena, California

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

Before: PREGERSON and TALLMAN, Circuit Judges, and SIMON, District Judge.**

Roberto Hernandez Guzman appeals the sentence imposed following his guilty plea to a single count of 8 U.S.C. § 1326, illegal reentry. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Because the arguments Guzman now raises on appeal were not first raised in district court, we review for plain error. *See* Fed. R. Crim. P. 52(b); *United States v. Ellsworth*, 456 F.3d 1146, 1152 (9th Cir. 2006).

We conclude that the district court committed no error at all. In calculating separately Guzman's sentence for a probation violation and Guzman's sentence for a new offense, the district court properly followed controlling authority. *See* U.S.S.G. § 4A1.2, cmt. n.11; *United States v. Palmer*, 946 F.2d 97, 99 (9th Cir. 1991). The district court did not err in awarding Guzman separate criminal history points for sentences imposed on different days. U.S.S.G. § 4A1.2(a)(2); *see also United States v. Gonzalez*, --- F.3d ---, 2013 WL 4792952, at *1 (9th Cir. 2013).

Guzman's contention that the district court erred in finding that he committed the instant offense while under a criminal justice sentence is unsupported by the record.

AFFIRMED.

** The Honorable Michael H. Simon, District Judge for the U.S. District Court for the District of Oregon, sitting by designation.