

MAR 13 2014

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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NOT FOR PUBLICATION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>Plaintiff - Appellee,</p> <p>v.</p> <p>JOSE GUADALUPE GOMEZ-PARRA,</p> <p>Defendant - Appellant.</p>
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No. 13-10119

D.C. No. 2:12-cr-00243-LDG

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted March 10, 2014**

Before: PREGERSON, LEAVY, and MURGUIA, Circuit Judges.

Jose Guadalupe Gomez-Parra appeals from the district court’s judgment and challenges the 63-month sentence imposed following his guilty-plea conviction for being a deported alien found unlawfully in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we vacate 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).

remand for resentencing.

Gomez-Parra contends that the district court erred by failing to appreciate and explain why it declined to exercise its discretion to vary downward from the Guidelines range to account for the government's failure to move for a third point for acceptance of responsibility under U.S.S.G. § 3E1.1(b). Effective November 1, 2013, section 3E1.1 was amended to clarify that "[t]he government should not withhold [a motion for reduction for acceptance of responsibility] based on interests not identified in § 3E1.1, such as whether the defendant agrees to waive his or her right to appeal." U.S.S.G. § 3E1.1 cmt. n.6. The government concedes, and we agree, that Gomez-Parra is entitled to a new sentencing hearing at which the government will move for the third point. Accordingly, we vacate Gomez-Parra's sentence and remand for resentencing.

In light of this disposition, we decline to reach Gomez-Parra's claim that his sentence is substantively unreasonable.

VACATED and REMANDED for resentencing.