

JUN 27 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NOT FOR PUBLICATION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>JAVIER AVILA-HERRERA,</p> <p>Defendant - Appellant.</p>
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No. 13-10554

D.C. No. 2:13-cr-00156-JAD

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Jennifer A. Dorsey, District Judge, Presiding

Submitted June 25, 2014**

Before: HAWKINS, TALLMAN, and NGUYEN, Circuit Judges.

Javier Avila-Herrera appeals from the district court’s judgment and challenges the 41-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 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).

Avila-Herrera contends that his sentence is substantively unreasonable because the district court did not sufficiently account for the mitigating circumstances related to his prior felony drug conviction. The district court did not abuse its discretion in imposing Avila-Herrera's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The court varied downward to account for Avila-Herrera's mitigating arguments. The sentence five months below the low end of the Guidelines range is substantively reasonable in light of the totality of the circumstances and the sentencing factors set forth in 18 U.S.C. § 3553(a). *See id.*

AFFIRMED.