

JUN 27 2014

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NOT FOR PUBLICATION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.

ALBERTO JAVIER BERNARDINO,

Defendant - Appellant.

No. 13-50426

D.C. No. 3:13-cr-01719-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted June 25, 2014**

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

Alberto Javier Bernardino appeals from the district court's judgment and challenges the 18-month sentence imposed following his guilty-plea conviction for being a removed alien found 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).

Bernardino contends that the district court procedurally erred by failing to calculate the Guidelines range, address adequately the 18 U.S.C. § 3553(a) sentencing factors, and explain sufficiently the sentence imposed. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. Bernardino has not shown a reasonable probability that he would have received a different sentence had the court explicitly calculated the Guidelines range. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008). The record reflects that the court was aware of the Guidelines range, considered the section 3553(a) sentencing factors, and adequately explained the sentence.

Bernardino next contends that his sentence is substantively unreasonable because the court overemphasized his criminal history and ignored mitigating factors. The district court did not abuse its discretion in imposing Bernardino's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence, six months above the advisory Guidelines range, is substantively reasonable in light of the totality of the circumstances and the section 3553(a) sentencing factors. *See id.*

AFFIRMED.