

MAR 03 2015

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELIAS ORTIZ-ROSALES, a.k.a. Julian
Elias Ortiz-Rosales, a.k.a. J. Elias Rosales
Ortiz,

Defendant - Appellant.

No. 14-10022

D.C. No. 4:13-cr-01481-CKJ-JR-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Marvin E. Aspen, Senior District Judge, Presiding

Submitted November 12, 2014**

Before: HUG, FARRIS, and CANBY, Circuit Judges.

Elias Ortiz-Rosales appeals from the district court's judgment and challenges the 51-month sentence imposed following his guilty-plea conviction for

* 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).

illegal re-entry, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Ortiz-Lopez contends that the district court procedurally erred by failing to rule on his motion for a variance. He did not object on these grounds in the district court, and we therefore review for plain error. *See United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008). There was no plain error. The district court acknowledged Ortiz-Lopez's argument for a variance, explained its reasons for rejecting that argument, and imposed a sentence within the Sentencing Guidelines range.

Relying on *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir. 2009), Ortiz-Rosales argues that his sentence is substantively unreasonable because of the age of a prior conviction that resulted in an enhancement under the advisory Sentencing Guidelines. The sentence is not substantively unreasonable in light of the 18 U.S.C. § 3553(a) factors and the totality of the circumstances, including the seriousness of the enhancing prior conviction and Ortiz-Lopez's subsequent criminal and immigration history. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Reyes*, 764 F.3d 1184, 1198-99 (9th Cir. 2014) (distinguishing *Amezcua-Vasquez* based on defendant's criminal history subsequent to the enhancing prior conviction); *United States v. Orozco-Acosta*, 607

F.3d 1156, 1167 (9th Cir. 2010) (distinguishing *Amezcuva-Vasquez* where higher sentence was necessary to deter defendant from more illegal re-entries).

AFFIRMED.