

JUN 29 2015

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NOT FOR PUBLICATION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.

ADELMO ISIDRO ROSALES-
VELASQUEZ,

Defendant - Appellant.

No. 14-50360

D.C. No. 3:14-cr-00350-AJB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Anthony J. Battaglia, District Judge, Presiding

Submitted June 22, 2015**

Before: HAWKINS, GRABER, and W. FLETCHER, Circuit Judges.

Adelmo Isidro Rosales-Velasquez appeals from the district court's judgment and challenges the 63-month sentence imposed following his jury-trial conviction for attempted reentry of a removed alien, in violation of 8 U.S.C. § 1326. We have

* 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).

jurisdiction under 28 U.S.C. § 1291, and we affirm.

Rosales-Velasquez first contends that the district court misinterpreted the requirements for an imperfect duress departure under U.S.S.G. § 5K2.12. The record belies this argument. To the extent that Rosales-Velasquez challenges the court's discretionary denial of the departure under section 5K2.12, our review is limited to determining whether the court imposed a substantively reasonable sentence. *See United States v. Ellis*, 641 F.3d 411, 421 (9th Cir. 2011).

Rosales-Velasquez also contends that his sentence is substantively unreasonable because the district court should have accorded more weight to imperfect duress and other factors. The district court did not abuse its discretion in imposing Rosales-Velasquez's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence at the bottom of the Guidelines is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Rosales-Velasquez's extensive criminal and immigration history, and his failure to be deterred by prior sentences. *See Gall*, 552 U.S. at 51.

AFFIRMED.