

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 25 2016

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VALENTINO CORONA-TAMIRIZ,

Defendant - Appellant.

No. 15-50176

D.C. No. 3:15-cr-00236-LAB

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Valentino Corona-Tamiriz appeals from the district court's judgment and challenges the 12-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).

Corona-Tamiriz contends that the district court procedurally erred by relying on the erroneous fact that he previously received a fast-track departure under U.S.S.G. § 5K3.1. We review for plain error, *see United States v. Christensen*, 732 F.3d 1094, 1100 (9th Cir. 2013), and find none. Corona-Tamiriz has not shown that the district court relied on any clearly erroneous fact in determining the sentence. *See id.* at 1103. Rather, the record reflects that the district court correctly observed that Corona-Tamiriz previously pleaded guilty to misdemeanor unlawful reentry, in violation of 8 U.S.C. § 1325, in exchange for the government's dismissal of a felony unlawful reentry charge. Moreover, contrary to Corona-Tamiriz's contention, the within-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Corona-Tamiriz's criminal and immigration history. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Corona-Tamiriz's motion to strike is granted. The Clerk shall strike the excerpts of record submitted on December 29, 2015.

AFFIRMED.