

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 29 2016

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARMANDO BAUTISTA-ESPINOZA,

Defendant - Appellant.

No. 15-50115

D.C. No. 3:14-cr-02856-BEN

MEMORANDUM*

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

Submitted February 24, 2016**

Before: LEAVY, FERNANDEZ, and RAWLINSON, Circuit Judges.

Armando Bautista-Espinoza appeals the 24-month sentence imposed following his guilty-plea conviction for improper entry by an alien, in violation of 8 U.S.C. § 1325. 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).

Bautista-Espinoza argues that the district court procedurally erred by relying on his prior conviction for vehicular manslaughter to the exclusion of all other 18 U.S.C. § 3553(a) sentencing factors and the mitigating facts. We review for plain error, *see United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010), and find none. The record reflects that the court considered a range of section 3553(a) sentencing factors and Bautista-Espinoza's sentencing arguments, and sufficiently explained its determination that an upward variance was warranted. *See United States v. Carty*, 520 F.3d 984, 992-93 (9th Cir. 2008) (en banc).

Bautista-Espinoza also contends that his above-Guidelines sentence is substantively unreasonable. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is not substantively unreasonable in light of the section 3553(a) sentencing factors and the totality of the circumstances, including Bautista-Espinoza's criminal history. *See Gall*, 552 U.S. at 51.

AFFIRMED.