

AUG 01 2016

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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NOT FOR PUBLICATION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.

JOSE JUAN MARTINEZ-MARTINEZ,  
a.k.a. Jose Juan Martinez,

Defendant-Appellant.

No. 15-10142

D.C. No. 4:14-cr-00943-JAS

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
James A. Soto, District Judge, Presiding

Submitted July 26, 2016\*\*

Before: SCHROEDER, CANBY, and CALLAHAN, Circuit Judges.

Jose Juan Martinez-Martinez appeals from the district court's judgment and challenges the 36-month sentence imposed following his guilty-plea conviction for

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

attempted reentry of a removed alien, in violation of 8 U.S.C. § 1326(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Martinez-Martinez contends that the district court abused its discretion by departing upwards on the basis of its conclusion that Martinez-Martinez's offense level substantially understated the seriousness of his prior convictions. Our review of Martinez-Martinez's challenge to the district court's decision to depart under note 7 of the commentary to U.S.S.G. § 2L1.2 is limited to determining whether the court imposed a substantively reasonable sentence. *See United States v. Vasquez-Cruz*, 692 F.3d 1001, 1005 (9th Cir. 2012). Contrary to Martinez-Martinez's argument, the above-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Martinez-Martinez's criminal history and the fact that he attempted to reenter the country within two months of being deported. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

**AFFIRMED.**