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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NOT FOR PUBLICATION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.

FERMIN RUELAS,

Defendant-Appellant.

No. 16-50039

D.C. No. 3:15-cr-01094-AJB

MEMORANDUM*

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

Submitted April 11, 2017**

Before: GOULD, CLIFTON, and HURWITZ, Circuit Judges.

Fermin Ruelas appeals from the district court's judgment and challenges the 18-month sentence imposed following his guilty-plea conviction for three counts of transportation of illegal aliens, in violation of 8 U.S.C. § 1324(a)(1)(A)(ii),

* 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).

(v)(II), and (a)(1)(B)(i). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

In his sentencing summary chart, Ruelas asked the court to grant a four-level combination of circumstances departure and calculate a corresponding guideline range of 12-18 months. In his sentencing memorandum, Ruelas repeated that request, but also stated that a minor role adjustment “appears to be appropriate.” At sentencing, Ruelas clarified that “I’m asking for, essentially, a minor role consideration here, whether that falls under the actual minor role departure or part of the combination of circumstances.” He also explained that he wanted consideration for his mitigating role in the offense “if not as an official minor role, departure, then as part of my combination of circumstances.” The court denied a minor role adjustment, but granted the four-level combination of circumstances departure requested by Ruelas. This resulted in a guideline range of 12-18 months, as Ruelas urged, and encompassed Ruelas’s requested sentence of 12 months and one day. The court elected to impose a high-end sentence of 18 months to avoid sentencing disparity with other similarly situated defendants in alien transportation cases.

Ruelas now contends that the district court erred in denying a minor role adjustment. He argues that the court should have granted a minor role adjustment and a combination of circumstances departure and calculated a guideline range of

6-12 months. This is not the argument that Ruelas presented to the district court. Furthermore, any error in the court's minor role analysis resulted in a benefit to Ruelas, who persuaded the court to impose a four-level combination of circumstances departure, rather than a two-level minor role departure, and calculate the Guidelines range he requested. We thus see no basis for remand.

Ruelas next contends that his sentence is substantively unreasonable in light of the mitigating factors. The court did not abuse its discretion in imposing Ruelas's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The below-Guidelines sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Ruelas's criminal history. *See Gall*, 552 U.S. at 51.

AFFIRMED.