

FILED

UNITED STATES COURT OF APPEALS

OCT 25 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ADRIAN ZITLALPOPOCA-
HERNANDEZ,

Defendant-Appellant.

No. 16-50167

D.C. No. 3:08-cr-04304-BEN-1
Southern District of California,
San Diego

ORDER

Before: W. FLETCHER and IKUTA, Circuit Judges, and FREUDENTHAL,*
Chief District Judge.

The court's memorandum disposition filed September 26, 2017, is hereby
amended as follows:

The fifth paragraph of the memorandum disposition previously read:

Finally, appellant argues that his sentence was substantively unreasonable. A sentence is not substantively unreasonable where "the record as a whole reflects rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a)." *United States v. Ruiz-Apolonio*, 657 F.3d 907, 911 (9th Cir. 2011) (internal quotations omitted). The record here reflects meaningful consideration of the 18 U.S.C. § 3553(a) factors, spanning three sentencing proceedings. The sentence was not substantively unreasonable.

* The Honorable Nancy Freudenthal, Chief United States District Judge for the District of Wyoming, sitting by designation.

The memorandum disposition is amended so that the fifth paragraph now reads:

Because we reverse and remand on procedural grounds, we do not reach the question of whether the sentence was substantively reasonable. *See, e.g., United States v. Grissom*, 525 F.3d 691, 696 (9th Cir. 2008).

With that amendment, Defendant-Appellant's petition for panel rehearing is DENIED. The petition for rehearing en banc remains pending. No further petitions for rehearing or for rehearing en banc may be filed.