

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 13 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-30099

Plaintiff-Appellee,

D.C. No. 2:17-cr-00019-TSZ

v.

MEMORANDUM\*

JULIO GALINDO-MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court  
for the Western District of Washington  
Thomas S. Zilly, District Judge, Presiding

Submitted April 11, 2018\*\*

Before: SILVERMAN, PAEZ, and OWENS, Circuit Judges.

Julio Galindo-Martinez appeals from the district court's judgment and challenges the 24-month sentence imposed following his guilty-plea conviction for illegal reentry after deportation, in violation of 18 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

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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).

Galindo-Martinez contends that his above-Guidelines sentence is substantively unreasonable. He argues that the district court's upward variance was improper because it was based on his criminal history, which was already reflected in the Guidelines calculation.

The district court did not abuse its discretion in imposing Galindo-Martinez's sentence. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Galindo-Martinez's criminal and immigration history. *See Gall*, 552 U.S. at 51. Several of Galindo-Martinez's prior convictions were too old to be counted in his criminal history score under the Guidelines. Furthermore, a district court may vary upward based on factors already incorporated into the Guidelines calculations. *See United States v. Christensen*, 732 F.3d 1094, 1100-01 (9th Cir. 2013).

**AFFIRMED.**