

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 5 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 22-50054

Plaintiff-Appellee,

D.C. No. 3:20-cr-03874-BAS-1

v.

LUIS ARMANDO JIMENEZ,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Cynthia A. Bashant, District Judge, Presiding

Submitted June 26, 2023**

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Luis Armando Jimenez appeals from the district court's judgment and challenges the 120-month sentence and 4 years of supervised release imposed following his guilty-plea conviction for importation of heroin and methamphetamine, in violation of 21 U.S.C. §§ 952, 960. We have jurisdiction

* 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).

under 28 U.S.C. § 1291, and we affirm.

Jimenez contends that the district court erred by not addressing his mitigating arguments. We need not resolve whether Jimenez preserved this claim because we would affirm under either de novo or plain error review. *See United States v. Hammons*, 558 F.3d 1100, 1103 (9th Cir. 2009) (stating standards of review for preserved and unpreserved claims of procedural error). The record demonstrates that the district court listened to Jimenez's arguments because it made the recommendations for participation in a residential reentry center and the residential drug abuse program that Jimenez requested. The court explained that it would not vary further below the Guidelines range in light of Jimenez's significant criminal history. This explanation allows for meaningful appellate review and communicates that the parties' arguments were heard and a reasoned decision was made. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc). The district court was not required to repeat Jimenez's mitigating arguments just to show it had considered them. *See United States v. Perez-Perez*, 512 F.3d 514, 516 (9th Cir. 2008).

AFFIRMED.