

OCT 27 2010

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

NAPIER VALDEZ-BRITO,

Defendant - Appellant.

No. 09-50288

D.C. No. 3:08-CR-03614-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted October 19, 2010**

Before: O'SCANNLAIN, TALLMAN, and BEA, Circuit Judges.

Napier Valdez-Brito appeals from his 41-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Valdez-Brito contends that the sentence imposed by the district court was

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

greater than necessary to accomplish the purposes of sentencing set forth in 18 U.S.C. § 3553(a). The record reflects that the district court thoroughly considered the § 3553(a) sentencing factors, and provided a well-reasoned explanation for the sentence imposed. The district court did not procedurally err, and the sentence was substantively reasonable under the totality of the circumstances. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *see also United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

AFFIRMED.