

OCT 05 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>ERNESTO LOPEZ-FIGUEROA,</p> <p style="text-align: center;">Defendant - Appellant.</p>
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No. 09-50560

D.C. No. 3:08-cr-02028-JAH

MEMORANDUM*

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

Submitted September 13, 2010**

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

Ernesto Lopez-Figueroa appeals from the 70-month sentence imposed following his guilty-plea conviction for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

* 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).

Lopez-Figueroa contends his sentence is substantively unreasonable in light of the mitigating circumstances he presented. The record reflects that the district court did not procedurally err and that, in light of the totality of the circumstances, including the 18 U.S.C. § 3553(a) factors, the bottom-of-the-Guidelines sentence is substantively reasonable. *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).

Lopez-Figueroa also argues that the district court erred when it denied his motion to dismiss the indictment. However, when Lopez-Figueroa entered an unconditional guilty plea, he waived the right to appeal the denial of his motion. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *United States v. Lopez-Armenta*, 400 F.3d 1173, 1175 (9th Cir. 2005). We therefore do not address the merits of this claim. *See Lopez-Armenta*, 400 F.3d at 1175.

AFFIRMED.