

DEC 18 2013

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NOT FOR PUBLICATION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.

JESUS MENESES-LOPEZ,

Defendant - Appellant.

No. 12-10387

D.C. No. 2:11-cr-02270-ROS

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Roslyn O. Silver, District Judge, Presiding

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Jesus Meneses-Lopez appeals from the district court's judgment and challenges the 57-month sentence imposed following his guilty-plea conviction for reentry of a removed alien, 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).

Meneses-Lopez contends that the district court procedurally erred by failing to recognize its discretion to vary downward from the Guideline range based upon policy grounds under *Kimbrough v. United States*, 552 U.S. 85 (2007). The record belies this contention. The district court recognized, but chose not to exercise, its *Kimbrough* discretion to vary from the Guidelines. See *United States v. Ayala-Nicanor*, 659 F.3d 744, 752-53 (9th Cir. 2011).

Meneses-Lopez also argues that his sentence is substantively unreasonable in light of the age of his 1998 felony conviction and other mitigating factors. The district court did not abuse its discretion in imposing Meneses-Lopez's sentence. See *Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence at the bottom of the Guidelines range is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Meneses-Lopez's overall criminal history and the need for deterrence and protection of the public. See *id.*

AFFIRMED.