

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 18-10185

Plaintiff-Appellee,

D.C. No. 2:17-cr-00312-KJD

v.

HECTOR DELGADO-ZUNIGA,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the District of Nevada
Kent J. Dawson, District Judge, Presiding

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Hector Delgado-Zuniga appeals from the district court's judgment and challenges the 41-month sentence imposed following his guilty-plea conviction for being a deported alien found unlawfully 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 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).

Delgado-Zuniga argues that his within-Guidelines sentence is substantively unreasonable because his personal circumstances warranted a below-Guidelines sentence and his 2003 felony conviction, which triggered an enhancement under U.S.S.G. § 2L1.2(b)(2)(B), was so stale as to render the Guidelines range unreasonable. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The court explicitly considered Delgado-Zuniga's mitigating arguments and imposed a within-Guidelines sentence that – unlike the sentence in *United States v. Amezcua-Vasquez*, 567 F.3d 1050 (9th Cir. 2009) – properly reflects the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Delgado-Zuniga's numerous prior removals from the United States and his failure to be deterred by a lengthy prior sentence for illegal reentry. *See Gall*, 552 U.S. at 51.

AFFIRMED.