

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-4014

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDGAR WILSANDER ARGUETA, a/k/a Jonathan E. Gutierrez,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. Robert E. Payne, Senior District Judge. (3:08-cr-00349-REP-1)

Submitted: November 30, 2009

Decided: December 15, 2009

Before NIEMEYER, KING, and SHEDD, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Michael S. Nachmanoff, Federal Public Defender, Mary E. Maguire, Assistant Federal Public Defender, Richmond, Virginia, for Appellant. Dana J. Boente, Interim United States Attorney, S. David Schiller, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Edgar Wilsander Argueta pled guilty to illegally reentering the United States after previously having been deported following an aggravated felony in violation of 8 U.S.C. § 1326(a), (b)(2) (2006). The district court sentenced him to forty-eight months of imprisonment. Argueta appeals, alleging that the district court's sentence was procedurally and substantively unreasonable. For the reasons that follow, we affirm.

Prior to sentencing the district court advised the parties it was considering an upward variance because of the defendant's repeated violation of immigration laws and violent criminal activity. At the sentencing hearing, the court adopted the finding in the presentence report that Argueta's advisory Sentencing Guidelines range was 30-37 months. Neither party objected to this finding. After considering this range, the factors in 18 U.S.C.A. § 3553(a) (West 2000 & Supp. 2009), and the parties' arguments, the court imposed a forty-eight-month sentence. The court provided specific reasons for imposing a sentence above the advisory range.

Under these circumstances, we find the sentence was reasonable. See Gall v. United States, 552 U.S. 38, 51 (2007) (providing standard). In particular, we find no procedural or substantive error, in light of how the court calculated

Argueta's sentence and explained its reasons therefor. United States v. Pauley, 511 F.3d 468, 473-76 (4th Cir. 2007). Accordingly, we affirm. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED