

NOT FOR PUBLICATION

FEB 23 2011

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FELIX SANTIAGO LEMUS-
RODRIGUEZ,

Defendant - Appellant.

No. 09-10505

D.C. No. 4:09-cr-01358-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted February 15, 2011**

Before: CANBY, FERNANDEZ, and M. SMITH, Circuit Judges.

Felix Santiago Lemus-Rodriguez appeals from the 41-month sentence imposed following his guilty-plea conviction for re-entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and

* 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).

we affirm.

Lemus-Rodriguez contends that the district court committed procedural error by: (1) relying on a clearly erroneous fact; (2) failing to explain adequately its reasons for rejecting his arguments; and (3) failing to explain adequately the reasons for and the extent of variance from the guidelines range.

Lemus-Rodriguez has not demonstrated that the alleged factual error by the district court affected his substantial rights. *See United States v. Dallman*, 533 F.3d 755, 761-62 (9th Cir. 2008). Lemus-Rodriguez's other contentions of procedural error are belied by the record. It is clear the district court considered Lemus-Rodriguez's sentencing arguments. *See United States v. Perez-Perez*, 512 F.3d 514, 516 (9th Cir. 2008).

Finally, in light of the totality of the circumstances and the 18 U.S.C. § 3553(a) factors, the sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007).

AFFIRMED.