

FEB 22 2011

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NOT FOR PUBLICATION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.

AGUSTIN GUADALUPE
GONZALES-RODRIGUEZ,

Defendant - Appellant.

No. 10-10233

D.C. No. 4:09-cr-02593-JMR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John M. Roll, Chief District Judge, Presiding

Submitted February 15, 2010 **

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

Agustin Guadalupe Gonzales-Rodriguez appeals from the 37-month sentence imposed following his guilty-plea conviction to re-entry after deportation,

* 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).

in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we dismiss.

Gonzales-Rodriguez contends that the district court erred when it applied the 16-level enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(ii) after finding that his prior conviction for statutory rape was a “crime of violence.” The valid and enforceable appeal waiver set forth in the plea agreement precludes our review of this issue. *See United States v. Bibler*, 495 F.3d 621, 623-24 (9th Cir. 2007). We therefore enforce the waiver and dismiss the appeal.

DISMISSED.