

FEB 23 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NOT FOR PUBLICATION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.

LUCIO MORA-TARULA,

Defendant - Appellant.

No. 10-50108

D.C. No. 3:09-cr-00174-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted February 15, 2011**

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

Lucio Mora-Tarula appeals from the 72-month sentence imposed following his guilty-plea conviction for being a deported alien found 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 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).

Mora-Tarula argues that the district court procedurally erred in failing to explain the sentence adequately and failing to consider the § 3553(a) factors.

We review for plain error, *see United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008), and affirm because Mora-Tarula has not established plain error by the district court, much less that his substantial rights may have been affected, *see id.* at 761-62.

Mora-Tarula also contends that his sentence is substantively unreasonable. In light of the totality of the circumstances and the factors set forth in 18 U.S.C. § 3553(a), the below-Guidelines sentence is not substantively unreasonable. *See Gall v. United States*, 552 U.S. 38, 51 (2007); *United States v. Valencia-Barragan*, 608 F.3d 1103, 1108-09 (9th Cir. 2010).

AFFIRMED.