

MAY 20 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>VICTOR MANUEL HERNANDEZ,</p> <p>Defendant - Appellant.</p>

No. 12-10364

D.C. No. 4:11-cr-03773-RCC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Ronald S.W. Lew, District Judge, Presiding**

Submitted May 14, 2013***

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Victor Manuel Hernandez appeals from the district court’s judgment and challenges the 46-month sentence imposed following his guilty-plea conviction for

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Ronald S.W. Lew, Senior United States District Judge for the Central District of California, sitting by designation.

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reentry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Hernandez contends that the district court erred when it used his prior conviction both as a basis for a 16-level enhancement and in calculating his criminal history category. As Hernandez concedes, this contention is foreclosed by *United States v. Garcia-Cardenas*, 555 F.3d 1049, 1050 (9th Cir. 2009) (per curiam).

Hernandez also contends that the district court erred in applying a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(a)(ii), because it wrongly characterized his prior robbery conviction under California Penal Code § 211 as a “crime of violence.” The district court did not err. *See United States v. Becerril-Lopez*, 541 F.3d 881, 893 & n.10 (9th Cir. 2008) (holding that a conviction under § 211 is categorically a “crime of violence” under the Guidelines).

AFFIRMED.