

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 22 2017

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 17-50033

Plaintiff-Appellee,

D.C. No. 3:16-cr-01755-DMS

v.

MEMORANDUM*

ROBERTO AYALA AMARILLAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Roberto Ayala Amarillas appeals from the district court's judgment and challenges the 27-month sentence imposed following his guilty-plea conviction for attempted reentry of a removed alien, 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 Ninth Circuit Rule 36-3.

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

Ayala contends that the district court improperly relied on his criminal history as a reason to deny the parties' joint request for a fast-track departure under U.S.S.G. § 5K3.1. The court did not abuse its discretion. *See United States v. Rosales-Gonzales*, 801 F.3d 1177, 1184 (9th Cir. 2015) (district court properly exercised its discretion to deny fast-track departure on the basis of defendant's immigration and criminal history). Moreover, the 27-month sentence is substantively reasonable in light of the 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including his failure to be deterred by a previous 37-month sentence. *See Rosales-Gonzales*, 801 F.3d at 1184-85.

AFFIRMED.