

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 15 2023

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FERDIK ARNOLDO MARTINEZ-
HERNANDEZ, AKA Jesus Hernandez,

Defendant-Appellant.

Nos. 22-10342
22-10343

D.C. Nos. 2:22-cr-00767-SPL-1
4:20-cr-00082-SPL-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Steven P. Logan, District Judge, Presiding

Submitted December 12, 2023**

Before: WALLACE, LEE, and BUMATAY, Circuit Judges.

In these consolidated appeals, Ferdik Arnaldo Martinez-Hernandez challenges the 46-month sentence imposed following his guilty-plea conviction for reentry of a removed alien, in violation of 8 U.S.C. § 1326, and the 8-month

* 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).

consecutive sentence imposed upon revocation of supervised release. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Martinez-Hernandez contends that the aggregate 54-month sentence is substantively unreasonable because the district court overemphasized his criminal history and gave insufficient weight to the mitigating factors. The district court did not abuse its discretion. *See Gall v. United States*, 552 U.S. 38, 51 (2007). The sentence is substantively reasonable in light of the applicable 18 U.S.C. § 3553(a) sentencing factors and the totality of the circumstances, including Martinez-Hernandez's criminal and immigration history. *See Gall*, 552 U.S. at 51; *see also United States v. Gutierrez-Sanchez*, 587 F.3d 904, 908 (9th Cir. 2009) ("The weight to be given the various factors in a particular case is for the discretion of the district court."). Nor did the district court err by considering Martinez-Hernandez's recent arrest for driving under the influence, which Martinez-Hernandez has not challenged as false or unreliable. *See United States v. Borrero-Isaza*, 887 F.2d 1349, 1352 (9th Cir.1989) (sentencing court may consider "a wide, largely unlimited variety of information"). Finally, contrary to Martinez-Hernandez's contention, the record reflects that the district court relied on only proper sentencing factors in imposing the revocation sentence. *See United States v. Simtob*, 485 F.3d 1058, 1062-63 (9th Cir. 2007).

AFFIRMED.