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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NOT FOR PUBLICATION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>RANDY JOE PERRY,</p> <p>Defendant - Appellant.</p>

No. 07-50489

D.C. No. CR-06-00506-GT

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, District Judge, Presiding

Argued and Submitted May 12, 2008
Pasadena, California

Before: SCHROEDER, SILVERMAN, and BERZON, Circuit Judges.

Randy Joe Perry appeals from the 37-month sentence imposed following his guilty-plea conviction for transportation of aliens, and aiding and abetting, in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii) and (a)(1)(A)(v)(II). We have jurisdiction pursuant to 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.

Perry contends that the district court erred in refusing to grant a minor participant adjustment, pursuant to United States Sentencing Guidelines § 3B1.2(b). In light of Perry's role in the criminal scheme and his conduct in avoiding apprehension and disobeying the order of the border patrol to proceed to secondary inspection, the district court did not err, in the particular circumstances of this case, in denying the § 3B1.2(b) adjustment. See United States v. Hernandez-Franco, 189 F.3d 1151, 1160 (9th Cir. 1999) (citing standard). The record reflects that the district court properly considered the § 3553(a) factors, including the kinds of sentences available and the need to avoid unwarranted sentencing disparities. See United States v. Carty, Nos. 05-10200, 05-30120, 2008 WL 763770, at *5 (9th Cir. Mar. 24, 2008) (en banc). The district court was permitted to take into account systemic concerns about the sentencing process and the applicable Guidelines range. See Kimbrough v. United States, 128 S. Ct. 558, 575 (2007). The district court's reliance on Perry's drug use as grounds for justifying his sentence was not impermissible, because the district court linked the need to deter Perry from future drug use with the goal of affording adequate deterrence to criminal conduct. See 18 U.S.C. § 3553(a)(2)(B).

Taking into account “the totality of the circumstances, including the extent of [the] variance from the Guidelines range,” we conclude that Perry's sentence

was reasonable. See Gall v. United States, 128 S. Ct. 586, 597 (2007); see also United States v. Garner, 490 F.3d 739, 744 (9th Cir. 2007) (“That a lesser sentence might also have been reasonable does not make this particular sentence unreasonable.”).

AFFIRMED.