

JAN 24 2008

CATHY A. CATTERSON, 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NOT FOR PUBLICATION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.

ROBERTO JOSE RUIZ-OCHOA,

Defendant - Appellant.

No. 07-30103

D.C. No. CR-06-02114-1-EFS

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Edward F. Shea, District Judge, Presiding

Submitted January 14, 2008**

Before: HALL, O'SCANNLAIN, and PAEZ, Circuit Judges.

Roberto Jose Ruiz-Ochoa appeals from the 120-month sentence imposed following his guilty-plea conviction for being an alien in the United States

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

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

following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Ruiz-Ochoa contends that the district court erred in calculating the appropriate advisory Sentencing Guidelines range when it applied the obstruction of justice enhancement and declined to apply the downward adjustment for acceptance of responsibility. We disagree. The district court properly applied the preponderance of the evidence standard to resolve the factual question of Ruiz-Ochoa's escape from federal custody. *See United States v. Kilby*, 443 F.3d 1135, 1140 (9th Cir. 2006). Because the Guidelines consider escape sufficient grounds for imposing an obstruction of justice enhancement, U.S.S.G § 3C1.1 cmt. n.4(e), and because an enhancement for obstruction of justice is usually inconsistent with a finding of acceptance of responsibility, U.S.S.G § 3E1.1 cmt. n.4, the district court did not abuse its discretion in calculating the advisory Guidelines range.

To the extent Ruiz-Ochoa challenges the reasonableness of his sentence, this contention fails. The district court articulated its reasoning to the degree required for meaningful appellate review, *see Rita v. United States*, 127 S. Ct. 2456, 2469 (2007), and we conclude that Ruiz-Ochoa's sentence is not unreasonable. *See Gall v. United States*, 128 S. Ct. 586, 602 (2007).

AFFIRMED.