

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 27 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SERGIO MARTINEZ ACEVEDO,

Defendant - Appellant.

No. 07-50277

D.C. No. CR-06-02665-BEN

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

Sergio Martinez Acevedo appeals from the 64-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, in

* 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).

violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Acevedo contends that the district court impermissibly enhanced his sentence based upon a prior conviction that was neither admitted by him nor proven beyond a reasonable doubt. This contention is foreclosed. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

Acevedo also contends that the district court's sentence was unreasonable because it assigned undue weight to certain 18 U.S.C. § 3553(a) sentencing factors while excluding others, and by neglecting to address his requests for adjustments and departures. Acevedo's contention fails as the record reflects that the district court fashioned a sentence based upon a consideration of all relevant § 3553(a) factors, and rejected Acevedo's arguments for downward adjustments and departures. The district court did not procedurally err, and the sentence imposed is not substantively unreasonable. *See Gall v. United States*, 128 S. Ct. 586, 596-97 (2007).

AFFIRMED.