

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NOT FOR PUBLICATION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.

REYNALDO GARCIA-CUNANAN,

Defendant - Appellant.

No. 07-10035

D.C. No. CR-06-00055-BES

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Brian E. Sandoval, District Judge, Presiding

Submitted January 14, 2008**

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

Reynaldo Garcia-Cunanan appeals from the 114-month sentence imposed following his guilty-plea conviction for armed bank robbery, in violation of 18 U.S.C. § 2113(a) and (d), and use of a firearm during and in relation to a crime

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

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

of violence, in violation of 18 U.S.C. § 924(c). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Appellant contends that the district court erred by incorrectly calculating the applicable Guidelines range. We disagree. The plain language of U.S.S.G. § 2K2.4(b) indicates that it pertains only to the Guidelines range for the mandatory consecutive term required by 18 U.S.C. § 924(c).

Appellant next contends that the district court erred by treating the Guidelines range as the presumptive sentence. We reject this contention because the record indicates that the district court was aware of its discretion to impose a sentence outside of the applicable Guidelines range based on the sentencing factors contained in 18 U.S.C. § 3553(a). *See United States v. Booker*, 543 U.S. 220, 245-46 (2005).

Finally, appellant contends that the district court erred by failing to adequately consider all the sentencing factors under 18 U.S.C. § 3553(a). We conclude that the district court's explanation of its reasoning was sufficient under the circumstances. *See Rita v. United States*, 127 S. Ct. 2456, 2468-69 (2007); *United States v. Perez-Perez*, 06-30341, 2008 WL 53664, at *1-2 (9th Cir. Jan. 4, 2008).

AFFIRMED.