

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 23 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FELIPE NERI CUEVAS-ROBLEDOS,

Defendant - Appellant.

No. 07-30106

D.C. No. CR-05-00248-AJB

MEMORANDUM *

Appeal from the United States District Court
for the District of Oregon
Anna J. Brown, District Judge, Presiding

Submitted May 20, 2008**

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

Felipe Neri Cuevas-Robledos appeals from the 57-month sentence imposed following his guilty-plea conviction for illegal reentry, in violation of 18 U.S.C.

* 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).

§ 1326. We have jurisdiction under 28 U.S.C. § 1291. We affirm the sentence and remand to correct the judgment.

Cuevas-Robledos contends that the district court did not give sufficient weight to his history and circumstances, and that the resulting sentence is unreasonable. Cuevas-Robledos also contends that his sentence is unreasonably long in light of the district court's failure to sufficiently weigh his lost opportunity to serve his federal and state sentences concurrently due to the government's delay in prosecuting him. The record indicates, however, that the district court specifically considered Cuevas-Robledos' history and circumstances, his lost opportunity to serve his sentences concurrently, and other factors enumerated in 18 U.S.C. § 3553(a). The resulting sentence imposed by the district court was neither procedurally erroneous nor substantively unreasonable. *See United States v. Carty*, Nos. 05-10200, 05-30120, 2008 WL 763770, *4-5 (9th Cir. Mar. 24, 2008) (en banc).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to § 1326(b)(2). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED with instructions to correct the judgment.