NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. MANUEL JOHN ROSALES, Defendant - Appellant.	No. 08-50166 D.C. No. 2:07-cr-00921-GAF-1 MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Submitted February 18, 2009[**]

Before: BEEZER, FERNANDEZ, and W. FLETCHER, Circuit Judges.

Manuel John Rosales appeals from the 54-month sentence imposed following his guilty-plea conviction for fraudulent use of access devices, in violation of 18 U.S.C. § 1029(a)(2), and aggravated identity theft, in violation of

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[*] 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).

18 U.S.C. § 1029A(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Rosales contends that the district court erred by ordering that he serve the sentence consecutive to his undischarged state sentence without expressly considering the factors under Sentencing Guideline § 5G1.3(c), and by failing to consider imposing a partially concurrent sentence. These contentions fail because the record reflects that the district court justified its sentence as a whole with reference to the factors listed in 18 U.S.C. § 3553(a), and properly exercised its sentencing discretion. *See* U.S.S.G. § 5G1.3 cmt. n.3 (2007); *see also United States v. Fifeld*, 432 F.3d 1056, 1066 (9th Cir. 2005).

Rosales similarly contends that the district court procedurally erred by failing to explain why it was ordering a consecutive sentence, despite his non-frivolous arguments in support of a concurrent sentence. We conclude that the district court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (en banc).

We further conclude that, in light of the totality of the circumstances, the sentence is substantively reasonable. *See id.*, 520 F.3d at 993.

AFFIRMED.