

APR 22 2009

MOLLY C. DWYER, 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NOT FOR PUBLICATION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.

JUAN GUEVARA-SABINO, a.k.a. Juan
Manuel Guevara-Sabino,

Defendant - Appellant.

No. 07-10608

D.C. No. CR-07-00424-CKJ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted April 13, 2009**

Before: GRABER, GOULD, and BEA, Circuit Judges.

Juan Guevara-Sabino appeals from the 41-month sentence imposed following his guilty-plea conviction for illegal re-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.

Guevara-Sabino contends that the government's refusal to move for a third point reduction for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1(b), was arbitrary and amounted to vindictive prosecution. This contention lacks merit. *See United States v. Medina-Beltran*, 542 F.3d 729, 731 (9th Cir. 2008); *see also United States v. Espinoza-Cano*, 456 F.3d 1126, 1138 (9th Cir. 2006) (recognizing "that there is nothing improper about the government providing an incentive to plea bargain").

AFFIRMED.