

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 27 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GUILLERMO GARCIA-AGUILAR,

Defendant - Appellant.

No. 08-50462

D.C. No. 3:06-CR-00678-LAB-1

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Larry A. Burns, District Judge, Presiding

Argued and Submitted July 7, 2009
Pasadena, California

Before: **KOZINSKI**, Chief Judge, **FERNANDEZ**, and **N.R. SMITH**,
Circuit Judges.

Although Garcia-Aguilar earned two years of time-served credit while waiting to be sentenced, this did not entitle him to a sentence of time served. The district court was permitted to choose between prison and probation, and the

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

sentence it imposed was a lawful, though not particularly admirable, exercise of its broad sentencing discretion. See, e.g., United States v. Whitehead, 532 F.3d 991, 993 (9th Cir. 2008).

Because the district court clearly would have given the same sentence whether or not receipt of stolen property qualifies as an “aggravated felony” within U.S.S.G. § 2L1.2(b)(1)(C), we needn’t address that issue.

AFFIRMED.