

OCT 28 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NOT FOR PUBLICATION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.

SERGIO LOUIS CHAVEZ,

Defendant - Appellant.

No. 08-50410

D.C. No. 2:07-cr-01386-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Sergio Louis Chavez appeals from the 71-month sentence imposed following his guilty-plea conviction for being a felon in possession of a firearm, 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 18 U.S.C. § 922(g)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Chavez contends that the district court erred in applying a two-level enhancement, pursuant to United States Sentencing Guidelines § 3C1.2, for reckless endangerment during flight. We disagree. The record reflects that Chavez attempted to flee police by running into a store while carrying a loaded firearm, and then quickly disposed of the firearm near employees and customers. Based on these facts, the district court did not clearly err in applying the § 3C1.2 enhancement. *See United States v. Reyes-Oseguera*, 106 F.3d 1481, 1482-84 (9th Cir. 1997) (reviewing for clear error the district court's factual determination that defendant's conduct constituted reckless endangerment under § 3C1.2 and holding that the adjustment is proper if the defendant's behavior while resisting arrest recklessly creates a substantial risk to other persons).

Chavez also contends that the district court procedurally erred by failing adequately to consider the sentencing factors of 18 U.S.C. § 3553(a), and that the sentence is substantively unreasonable. The record reflects that the district court did not procedurally err, and the sentence is not unreasonable. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc).

AFFIRMED.