APPENDIX A

710 Fed.Appx. 297 (Mem)
This case was not selected for
publication in West's Federal Reporter.
See Fed. Rule of Appellate Procedure 32.1
generally governing citation of judicial
decisions issued on or after Jan. 1, 2007.
See also U.S.Ct. of App. 9th Cir. Rule 36-3.
United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Carlos PLACERES-CRUZ, Defendant-Appellant.

No. 17-50092
|
Submitted January 16, 2018 *
|
Filed January 19, 2018

Appeal from the United States District Court for the Southern District of California, Larry A. Burns, District Judge, Presiding, D.C. No. 3:16-cr-02732-LAB

Attorneys and Law Firms

Helen H. Hong, Assistant U.S. Attorney, Daniel Earl Zipp, Assistant U.S. Attorney, Office of the US Attorney, San Diego, CA, for Plaintiff-Appellee

James Fife, Attorney, Federal Defenders of San Diego, Inc., San Diego, CA, for Defendant-Appellant

Before: REINHARDT, TROTT, and HURWITZ, Circuit Judges.

*298 MEMORANDUM **

Carlos Placeres-Cruz appeals the 37-month sentence and 3-year term of supervised release imposed following his guilty-plea conviction for attempted reentry of a removed alien, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

Placeres-Cruz first contends that the government breached his plea agreement by failing sufficiently to urge the merits of a four-level fast-track departure at his sentencing hearing. "Courts enforce the literal terms of a plea agreement," *United States v. Ellis*, 641 F.3d 411, 417 (9th Cir. 2011), and here the government complied with the literal terms of the agreement by recommending a four-level fast-track departure and a sentence of 24 months' custody. Because the government did not agree to urge particular arguments in favor of the departure, its failure to discuss the sparing of prosecutorial resources arising from the plea did not constitute a breach. *See United States v. Benchimol*, 471 U.S. 453, 455-56, 105 S.Ct. 2103, 85 L.Ed.2d 462 (1985) (per curiam); *United States v. Johnson*, 187 F.3d 1129, 1135 (9th Cir. 1999).

Placeres-Cruz next argues that the district court improperly based its imposition of supervised release on punitive factors. Because Placeres-Cruz did not raise this objection in the district court, we review for plain error. *See United States v. Valencia-Barragan*, 608 F.3d 1103, 1108 (9th Cir. 2010). Even if the district court plainly erred by considering the need to punish when deciding whether to impose supervised release, *see* 18 U.S.C. § 3583(c), Placeres-Cruz has not demonstrated a reasonable probability that he would have received a different sentence absent the error. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008). Given the court's expressed concern about Placeres-Cruz's extensive and recidivist criminal and immigration history, and the need to deter, we conclude the district court would have imposed supervised release absent any consideration of punishment.

AFFIRMED.

All Citations

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Footnotes

* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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