

APR 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NOT FOR PUBLICATION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.

OSAMA MUSA ALFERAHIN,

Defendant - Appellant.

No. 08-10113

D.C. No. 4:03-CR-02051-JMR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John M. Roll, District Judge, Presiding

Submitted April 13, 2009**

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

Osama Musa Alferahin appeals from the district court's order denying his motion to dismiss the indictment on double jeopardy grounds. We have

* 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).

jurisdiction pursuant to 28 U.S.C. § 1291, *see Abney v. United States*, 431 U.S. 651, 662 (1977), and we affirm.

As a preliminary matter, we decline to dismiss this appeal under the doctrine of fugitive disentitlement. *See, e.g., United States v. Gonzalez*, 300 F.3d 1048, 1051 (9th Cir. 2002).

However, we agree with the district court that the Double Jeopardy Clause does not prohibit a second trial. *See Burks v. United States*, 437 U.S. 1, 14-16 (1978); *United States v. Cote*, 51 F.3d 178, 181-83 (9th Cir. 1995).

AFFIRMED.