

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 26 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALBERTO HERNANDEZ-AMPARAN,
aka Alberto Hernandez,

Defendant - Appellant.

No. 07-10508

D.C. No. CR-06-01692-JMR

MEMORANDUM*

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

Submitted May 12, 2009**

Before: PREGERSON, CANBY, and BERZON, Circuit Judges.

Alberto Hernandez-Amparan appeals from the 33-month sentence imposed following his jury-trial conviction for illegal re-entry after deportation, in violation

* 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).

of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Hernandez-Amparan contends that the district court erred at sentencing by incorrectly assuming that he was subject to a twenty-year statutory maximum penalty pursuant to 8 U.S.C. § 1326(b)(2). We conclude that Hernandez-Amparan has failed to demonstrate that any error affected his substantial rights. *See United States v. Dallman*, 533 F.3d 755, 762 (9th Cir. 2008).

At the government's request, we remand the case to the district court with instructions to correct the reference in the judgment to § 1326(b)(2). *See United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000).

AFFIRMED; REMANDED to correct the judgment.