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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>KENNETH GEORGE CLAUNCH, Jr.,</p> <p>Defendant - Appellant.</p>

No. 08-10319

D.C. No. 4:07-CR-00791-FRZ-
CRP

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Submitted June 8, 2009**
San Francisco, California

Before: TROTT, McKEOWN, and IKUTA, Circuit Judges.

The district court did not err in sentencing Claunch to the five-year minimum sentence under 8 U.S.C. § 1324(a)(2)(B), because Claunch was convicted of violating § 1324(a)(2)(B)(ii) three times. *United States v. Gonzalez-*

* 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).

Torres, 309 F.3d 594, 601–02 (9th Cir. 2002). Therefore, Claunch’s argument that the district court erred in calculating and applying the Sentencing Guidelines is moot, because he received the shortest sentence possible.

Because Claunch adduced no evidence that the aliens had “cut a deal with the prosecution” which allowed them to remain in the country legally in exchange for their testimony, the district court did not err in precluding Claunch from inquiring into the aliens’ legal status in the United States. *United States v. Parker*, 991 F.2d 1493, 1497 (9th Cir. 1993).

Finally, the district court did not abuse its discretion in denying Claunch’s motion for a continuance. Also, any error would have been harmless, because there was no evidence that Claunch’s medical condition had any effect on his ability to participate in his trial.

AFFIRMED