

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 01 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN JOSE MIRANDA,

Defendant - Appellant.

No. 08-50405

D.C. No. 3:08-cr-01005-MLH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Juan Jose Miranda appeals from the 70-month sentence imposed following his guilty-plea conviction for attempted entry after deportation, in violation of 8

* 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).

U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm but remand to correct the judgment.

Miranda contends that his sentence is unreasonable because the district court failed to consider all of the 18 U.S.C. § 3553(a) sentencing factors. We conclude that the district court did not procedurally err. *See United States v. Carty*, 520 F.3d 984, 991-93 (9th Cir. 2008) (en banc).

Miranda also contends that the district court erred when it sentenced him in excess of two years, pursuant to 8 U.S.C. § 1326(b), because the fact of his prior conviction was not alleged in his indictment or proved to a jury beyond a reasonable doubt. As Miranda concedes, this contention is foreclosed. *See United States v. Grisel*, 488 F.3d 844, 846-47 (9th Cir. 2007) (en banc); *see also United States v. Covian-Sandoval*, 462 F.3d 1090, 1096-97 (9th Cir. 2006).

In accordance with *United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000), we remand the case to the district court with instructions that it delete from the judgment the incorrect reference to 8 U.S.C. § 1326(b). *See United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)).

AFFIRMED; REMANDED to correct the judgment.