

AUG 17 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NOT FOR PUBLICATION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.

EVERARDO VALENZUELA-RUIZ,

Defendant - Appellant.

No. 08-10576

D.C. No. 5:07-CR-00598-JDF

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jeremy D. Fogel, District Judge, Presiding

Submitted August 11, 2009**

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Everardo Valenzuela-Ruiz appeals from the 77-month sentence imposed following his guilty-plea conviction for illegal re-entry following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291,

* 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).

and we affirm.

Valenzuela-Ruiz contends that the district court erred under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), by enhancing his sentence beyond the two year statutory maximum, because the temporal relationship between his removal(s) and his prior felony conviction was not alleged in the information nor admitted by him. Because the information alleged at least one date of removal which Ruiz admitted at the Rule 11 hearing, the district court's determination that the removal was subsequent to a prior felony conviction did not violate *Apprendi*. See *United States v. Mendoza-Zaragoza*, 567 F.3d 431, 434 (9th Cir. 2009).

AFFIRMED.