

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 16 2009

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JORGE ALBERT ESTRELLA-MOLINA,

Defendant - Appellant.

No. 07-16706

D.C. Nos. CV-07-00250-DCB
CR-74-00233-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Argued and Submitted November 3, 2009
San Francisco, California

Before: HUG, RYMER and McKEOWN, Circuit Judges.

Jorge Albert Estrella-Molina appeals the district court's denial of his Motion to Clarify Sentence, or in the Alternative, Petition for Writ of Error *Coram Nobis* to Vacate Judgment as well as the district court's denial of his motion to reconsider. We affirm.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Judge Marquez's decision makes no mention of the Federal Youth Corrections Act provision for discharging an offender's probation. Therefore, the district court's finding that Judge Marquez did not intend to set aside Estrella-Molina's conviction was not clearly erroneous, and the district court did not err by denying Estrella-Molina's motion to clarify his sentence. *See, e.g., United States v. Dickie*, 752 F.2d 1398, 1400 (9th Cir. 1985) (per curiam).

The district court also did not err in denying Estrella-Molina's petition for a writ of *coram nobis*. To warrant issuance of the writ, an error must have been of "the most fundamental character." *United States v. Riedl*, 496 F.3d 1003, 1006 (9th Cir. 2007). In reviewing a district court's denial of the writ, findings of fact must be upheld unless they are clearly erroneous. *Hirabayashi v. United States*, 828 F.2d 591, 594 (9th Cir. 1987). As stated above, the district court did not err in finding that Judge Marquez did not intend to set aside Estrella-Molina's conviction. Therefore, Estrella-Molina has not identified any error, let alone an error of the most fundamental character.

AFFIRMED.