

JAN 06 2010

MOLLY C. DWYER, CLERK
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NOT FOR PUBLICATION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>JORGE ALBERTO SOTO-CASTELO,</p> <p>Defendant - Appellant.</p>
--

No. 09-10097

D.C. No. 2:08-CR-00157-ECR

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Jorge Alberto Soto-Castelo appeals from the district court’s order denying his motion to dismiss the indictment charging him with being an alien found unlawfully in the United States, in violation of 8 U.S.C. § 1326. We have

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Soto-Castelo contends that his prior deportation was invalid because the immigration judge failed to advise him that he might be eligible for “fast-track” voluntary departure under 8 U.S.C. § 1229c(a)(1). Soto-Castelo was not prejudiced by any defect in his prior deportation proceeding. In particular, Soto-Castelo has not demonstrated a plausible ground for relief from deportation, *see United States v. Arrieta*, 224 F.3d 1076, 1079 (9th Cir. 2000), because he had a prior aggravated felony conviction, and was therefore barred from receiving voluntary departure, *see United States v. Benitez-Perez*, 367 F.3d 1200, 1204 (9th Cir. 2004); *see also Lopez v. Gonzales*, 549 U.S. 47, 52-53 (2006).

AFFIRMED.