

JAN 26 2010

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NOT FOR PUBLICATION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.

JORGE AGUILAR-HERNANDEZ,

Defendant - Appellant.

No. 09-50016

D.C. No. 2:08-cr-01244-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted January 11, 2010**

Before: BEEZER, TROTT, and BYBEE, Circuit Judges.

Jorge Aguilar-Hernandez appeals from the 37-month sentence imposed following his guilty-plea conviction for illegal reentry, in violation of 8 U.S.C.

* 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).

§ 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate Aguilar-Hernandez's sentence and remand for resentencing.

Aguilar-Hernandez contends that the district court erred by assigning him two criminal history points, pursuant to U.S.S.G. § 4A1.1(d), because there was insufficient evidence that he was on parole at the time he committed the instant offense. We cannot resolve the issue on this record.

Accordingly, we vacate Aguilar-Hernandez's sentence and remand to the district court for further consideration.

VACATED and REMANDED.