

MAR 05 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NOT FOR PUBLICATION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.

FAUSTINO CARRILLO,

Defendant - Appellant.

No. 07-50521

D.C. No. CR-07-00580-JFW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted February 16, 2010**

Before: FERNANDEZ, GOULD, and M. SMITH, Circuit Judges.

Faustino Carrillo appeals from the 57-month sentence imposed following his guilty-plea conviction for being an illegal alien found in the United States

* 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).

following deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Carrillo contends that the district court miscalculated his Sentencing Guidelines range because it counted a prior conviction towards his criminal history score pursuant to U.S.S.G. §§ 4A1.1 and 4A1.2, rather than as relevant conduct pursuant to U.S.S.G. § 1B1.3. This contention is foreclosed. *See United States v. Cruz-Gramajo*, 570 F.3d 1162, 1167 (9th Cir. 2009).

Carrillo also contends that the district court violated his Fifth Amendment right against self-incrimination when it imposed a condition of supervised release which requires him to report to probation if he reenters the country. As Carrillo acknowledges, this contention is foreclosed. *See United States v. Rodriguez-Rodriguez*, 441 F.3d 767, 772-73 (9th Cir. 2006).

AFFIRMED.