

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 15 2010

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VICTOR MANUEL CANEDO-REYNA,

Defendant - Appellant.

No. 09-10196

D.C. No. 4:08-CR-00040-FRZ-
CRP-1

MEMORANDUM*

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

Appeal from the United States District Court
for the District of Arizona
Frank R. Zapata, District Judge, Presiding

Argued and Submitted March 10, 2010
San Francisco, California

Before: FERNANDEZ, GRABER, and McKEOWN, Circuit Judges.

Defendant Victor Canedo-Reyna appeals his conviction for illegal reentry in violation of 8 U.S.C. § 1326. For the following reasons, we affirm.

1. Reviewing de novo, United States v. Proa-Tovar, 975 F.2d 592, 594 (9th Cir. 1992) (en banc), we hold that the district court properly denied Defendant's collateral attack on the 1985 deportation order. The court correctly held that

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Defendant had not exhausted his administrative remedies. See 8 U.S.C. § 1326(d)(1) (requiring exhaustion of administrative remedies). As the government concedes, Defendant could still file a motion to reopen, but he has not done so.

2. Reviewing de novo, United States v. Mosley, 465 F.3d 412, 414-15 (9th Cir. 2006), we hold that sufficient evidence supported the conviction. A reasonable juror could have concluded that Defendant was free from official restraint in the five-day period between his entry into the country and his interview, many miles from the border, with the testifying government agent. See United States v. Bello-Bahena, 411 F.3d 1083, 1087 (9th Cir. 2005) (reaching the same conclusion on similar facts).

AFFIRMED.