

JUL 21 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NOT FOR PUBLICATION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.

JOSE LEONARDO SANCHEZ-RIVERA,

Defendant - Appellant.

No. 09-50136

D.C. No. 5:08-cr-00185-VAP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Jose Leonardo Sanchez-Rivera appeals from the 30-month sentence imposed following his guilty-plea conviction for being an illegal alien found in the United

* 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).

States following deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Sanchez-Rivera contends that the district court erred in calculating his criminal history when it imposed an additional criminal history point pursuant to U.S.S.G. § 4A1.1(e). We do not reach this issue. Because the additional criminal history point would not change the criminal history category, any error was harmless. *See United States v. Cruz-Gramajo*, 570 F.3d 1162, 1174 (9th Cir. 2009).

AFFIRMED.