

AUG 27 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NOT FOR PUBLICATION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.

ASCENSION HERNANDEZ-PEREZ,
AKA Jose Asuncion Hernandez, AKA
Jose Ascencion Hernandez,

Defendant - Appellant.

No. 08-50321

D.C. No. 2:08-cr-00014-RGK-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Argued and Submitted June 10, 2010
Pasadena, California

Before: KOZINSKI, Chief Judge, RAWLINSON, Circuit Judge, and BENNETT,
District Judge.**

Ascension Hernandez-Perez failed to show any prejudice from the district
court's failure to comply with Federal Rules of Criminal Procedure Rule

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

** The Honorable Mark W. Bennett, U.S. District Judge for the Northern
District of Iowa, sitting by designation.

32(i)(1)(A). *See United States v. Davila-Escovedo*, 36 F.3d 840, 844 (9th Cir. 1994). Therefore, any error was harmless. *See United States v. Soltero*, 510 F.3d 858, 863 (9th Cir. 2007).

The district court's addition of the two § 4A1.1(d) points brought his total criminal history from ten to twelve, but did not change his criminal history category of V, and thus resulted in the same Guidelines sentencing range. *See* U.S.S.G. Ch. 5, Pt. A. Because this was a "fast track" plea agreement, any error was harmless. *See United States v. Cruz-Gramajo*, 570 F.3d 1162, 1166 n.3 (9th Cir. 2009).

AFFIRMED.