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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL DAVID LENDAHL,

Petitioner - Appellant,

v.

PALOSAARI, Warden ASPC Douglas and
STATE OF ARIZONA ATTORNEY
GENERAL,

Respondents - Appellees.

No. 09-15496

D.C. No. 2:07-cv-02003-MHM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Mary H. Murguia, District Judge, Presiding

Argued and Submitted November 3, 2010
Stanford, California

Before: THOMAS and IKUTA, Circuit Judges, and RESTANI, Judge.**

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

** The Honorable Jane A. Restani, Judge of the United States Court of International Trade, sitting by designation.

Although Lendahl exhausted his claim that his sentence was improperly enhanced because a judge, not a jury, found the facts underlying the enhancement, we affirm the district court's denial of his federal habeas petition. The state court's denial of Lendahl's claim was not an unreasonable application of clearly established Federal law, because no Supreme Court precedent clearly establishes that a prior conviction must be proved to a jury when it is used as a sentencing factor. *See Almendarez-Torres v. United States*, 523 U.S. 224 (1998). Further, Lendahl's claim that he did not knowingly and intelligently waive his right to a jury determination of any aggravating factors is unavailing, given that Lendahl's plea agreement and colloquy reflect that he knew and understood his jury-sentencing rights, consulted his attorney regarding those rights and the consequences of waiving them, and then agreed, orally and in writing, to give up those jury-sentencing rights.

AFFIRMED.