

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>RUBEN JUAREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>
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No. 07-72967

Agency No. A078-440-820

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Ruben Juarez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reconsider.

We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reconsider, *Mohammed v. Gonzales*, 400 F.3d 785, 791 (9th

* 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).

Cir. 2005), and review de novo questions of law and constitutional claims, *Kahn v. Holder*, 584 F.3d 773, 776 (9th Cir. 2009). We deny the petition for review.

The BIA correctly concluded that Juarez’s 2003 conviction for violating Cal. Penal Code § 484(a) is a crime involving moral turpitude. *See Castillo-Cruz v. Holder*, 581 F.3d 1154, 1160 (9th Cir. 2009) (“[W]e have consistently held that acts of petty theft constitute crimes of moral turpitude.”). Juarez has waived any challenge to the BIA’s determination that his 1990 conviction for violating Cal. Penal Code § 273.5(a) is also a crime involving moral turpitude. *Martinez-Serrano v. INS*, 94 F.3d 1256, 125960 (9th Cir. 1996). Because Juarez was convicted of more than one crime involving moral turpitude, he was ineligible for the “petty offense” exception to the moral turpitude ground of inadmissibility, *see* 8 U.S.C. § 1182(a)(2)(A)(ii)(II), and is therefore ineligible for cancellation of removal, *see* 8 U.S.C. § 1229b(b)(1)(C).

Juarez’s retroactivity contention fails because the conviction that rendered him inadmissible was incurred after the enactment of Illegal Immigration Reform and Immigrant Responsibility Act of 1996. *See Saravia-Paguada v. Gonzales*, 488 F.3d 1122, 1132-34 (9th Cir. 2007) (an alien must demonstrate some affirmative reliance on a previously available immigration benefit to show impermissible retroactivity).

The BIA accordingly acted within its discretion in denying Juarez's motion to reconsider because the motion failed to identify any error of fact or law in the BIA's prior decision affirming the immigration judge's decision denying cancellation of removal. *See* 8 C.F.R. § 1003.2(b)(1).

PETITION FOR REVIEW DENIED.