

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NOT FOR PUBLICATION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>ERIK DANIEL PEREZ,</p> <p>Petitioner,</p> <p>v.</p> <p>ERIC H. HOLDER, Jr., Attorney General,</p> <p>Respondent.</p>

No. 08-74012

Agency No. A078-023-830

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.

Erik Daniel Perez, 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, *Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir.

* 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).

2002), and review de novo equal protection claims, *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1246 (9th Cir. 2008). We deny in part and dismiss in part the petition for review.

The BIA did not abuse its discretion in denying Perez's motion to reconsider because his motion did not identify an error of law or fact in the BIA's prior order where Perez failed to establish that the entry of judgment for his guilty plea had been deferred pursuant to Cal. Penal Code § 1000 *et seq.* See 8 C.F.R.

§ 1003.2(b)(1); *Chavez-Perez v. Ashcroft*, 386 F.3d 1284, 1292-93 (9th Cir. 2000).

We lack jurisdiction to review Perez's contention that he is eligible for expungement under Cal. Penal Code § 1203.4 or 1203.4a because he failed to exhaust this contention before the agency. See *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Perez's equal protection claim is not persuasive. See *Sandoval-Luna*, 526 F.3d at 1247.

The Clerk shall amend the docket to reflect that Perez is proceeding pro se. The Clerk shall serve this order on Perez at the address provided in his request to proceed pro se: c/o Perez Family, 12979 Thirteenth Street, Chino, California 91710.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.