

JUN 15 2011

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NOT FOR PUBLICATION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.

EDUARDO SANCHEZ-CALDERON,
AKA Eduardo Sanchez Calderon, AKA
Eduardo Gomez, AKA Rick Gomez, AKA
Ricardo Lopez, AKA Ricardo Gomez
Lopez, AKA Ricardo Sanchez,

Defendant - Appellant.

No. 10-50136

D.C. No. 2:09-cr-00410-PSG-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted June 7, 2011**
Pasadena, California

* 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).

Before: D.W. NELSON and IKUTA, Circuit Judges, and PIERSOL, Senior District Judge.***

Because Sanchez-Calderon’s motion to withdraw his guilty plea to the § 1326(a) violation was based on a claim of “[e]rroneous or inadequate legal advice” regarding the possibility of a collateral attack on his 1994 deportation order, there was no requirement that he cite a “reason for withdrawing the plea that did not exist when the defendant entered his plea,” just that he show that this advice could “plausibly . . . have motivated his decision to plead guilty.” *United States v. McTiernan*, 546 F.3d 1160, 1167 (9th Cir. 2008) (internal quotation marks omitted).

But while the district court applied the wrong legal standard in considering Sanchez-Calderon’s motion, any error is harmless because Sanchez-Calderon’s 2006 deportation order, which he admitted and does not challenge on appeal, provided a separate basis for the § 1326 prosecution at issue, and a reasonable person with no defense to one of the deportation orders underlying his criminal prosecution would have pled guilty regardless of the invalidity of an earlier, separate deportation proceeding. *See United States v. Mayweather*, 634 F.3d 498, 504–05 (9th Cir. 2010).

AFFIRMED.

*** The Honorable Lawrence L. Piersol, Senior District Judge for the U.S. District Court for South Dakota, Sioux Falls, sitting by designation.