

DEC 21 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN ANTONIO MURO-SANCHEZ,

Defendant - Appellant.

No. 11-30014 & 11-30018

D.C. Nos. 1:10-cr-30038-PA-1

1:10-cr-30078-PA-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, Senior District Judge, Presiding

Submitted December 19, 2011**

Before: GOODWIN, WALLACE, and McKEOWN, Circuit Judges.

In these consolidated appeals, Juan Muro-Sanchez appeals the sentence imposed following his guilty plea to illegal reentry after deportation, and the sentence imposed upon revocation of supervised release in connection with a prior

* 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).

illegal reentry conviction. The district court applied an 8-level increase to Muro-Sanchez's guideline level sentence pursuant to U.S.S.G. § 2L1.2(b)(1)(C) based on his prior conviction for second degree commercial burglary under California Penal Code § 459.

We agree with the parties that under *United States v. Aguila-Montes de Oca*, 655 F.3d 915 (9th Cir. 2011) (en banc) (per curiam), the district court erred in treating defendant's prior California burglary conviction as an aggravated felony. The sentence is vacated, and remanded for resentencing in light of *Aguila-Montes de Oca*.

SENTENCE VACATED; REMANDED FOR RESENTENCING.