

MAR 29 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p style="text-align: center;">Plaintiff - Appellee,</p> <p style="text-align: center;">v.</p> <p>RUDY LEE WAHCHUMWAH,</p> <p style="text-align: center;">Defendant - Appellant.</p>

No. 08-30476

D.C. No. 2:08-CR-02016-WFN-1

ORDER*

Appeal from the United States District Court
for the Eastern District of Washington
Wm. Fremming Nielsen, Senior District Judge, Presiding

Argued and Submitted October 14, 2009
Seattle, Washington

Before: CUDAHY **, RAWLINSON, and CALLAHAN, Circuit Judges.

Rudy Lee Wahchumwah was charged with, and convicted of, failing to register as a sex offender under the Sex Offender Registration and Notification Act (SORNA). After we affirmed his conviction in a memorandum disposition, *see*

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

** The Honorable Richard D. Cudahy, Senior Circuit Judge for the Seventh Circuit, sitting by designation.

United States v. Wahchumwah, 409 Fed. App'x 130, 132 (9th Cir. 2010), Wahchumwah filed a petition for rehearing and a motion to dismiss the indictment. The motion to dismiss was predicated on our opinion in *United States v. Valverde*, 628 F.3d 1159 (9th Cir. 2010), in which we held that SORNA was not applicable until August 1, 2008 for those individuals whose convictions predated the enactment of SORNA. *See id.* at 1160.

Wahchumwah's conviction for a sex offense predated the enactment of SORNA and his failure to register occurred prior to August 1, 2008. Because SORNA did not apply to Wahchumwah prior to August 1, 2008, his indictment for a violation of SORNA's registration requirements was invalid.

We hereby grant Wahchumwah's motion to dismiss the indictment, vacate our prior disposition, and remand this case to the district court for dismissal of the indictment against Wahchumwah. This action renders the petition for rehearing moot.

Appellant's Motion to Dismiss Indictment for Lack of Subject Matter Jurisdiction filed on January 4, 2011, is GRANTED. The prior disposition, filed on December 8, 2010, is VACATED. This case is REMANDED to the district court for Dismissal of the Indictment.

The Petition of Appellant for Rehearing With Suggestion for Rehearing En Banc, filed on December 16, 2010, is DENIED as moot.