

APR 22 2013

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NOT FOR PUBLICATION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.

TIRSO MORALES,

Defendant - Appellant.

No. 11-16656

D.C. No. CR-84-00106-SC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Samuel Conti, District Judge, Presiding

Submitted April 16, 2013**

Before: CANBY, IKUTA, and WATFORD, Circuit Judges.

Tirso Morales appeals from the district court’s judgment denying his petition for a writ of coram nobis. We have jurisdiction under 28 U.S.C. § 1291. We review the denial of a writ of coram nobis de novo, *see United States v. Riedl*, 496 F.3d 1003, 1005 (9th Cir. 2007), and we affirm.

* 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)*.

Morales challenges his 1984 guilty-plea conviction on the ground that counsel was ineffective by failing to inform him of the possible immigration consequences of his guilty-plea as required under *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). The Supreme Court recently held that *Padilla* does not apply retroactively to individuals whose convictions, like Morales's, became final before the Supreme Court decided *Padilla*. See *Chaidez v. United States*, 133 S. Ct. 1103, 1113 (2013). Therefore, the district court properly denied Morales coram nobis relief because he could not demonstrate that there has been an "error of the most fundamental character." See *Riedl*, 496 F.3d at 1005 (internal quotations omitted).

The government's motion, filed on February 25, 2013, to lift the stay and for summary affirmance is denied as moot.

AFFIRMED.