

MAR 21 2016

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NOT FOR PUBLICATION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.

JUAN CARDONA-ELIAS, a.k.a. Jose
Cardenas Ilies, a.k.a. Juan Jose Cardona-
Elias,

Defendant - Appellant.

No. 15-10215

D.C. No. 2:15-cr-00067-SPL

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Steven P. Logan, District Judge, Presiding

Submitted March 15, 2016**

Before: GOODWIN, LEAVY, and CHRISTEN, Circuit Judges.

Juan Cardona-Elias appeals from the district court's judgment and challenges the 27-month sentence imposed following his guilty-plea conviction for

* 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).

reentry of a removed alien, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and we vacate and remand for resentencing.

Cardona-Elias contends that the district court procedurally erred by basing the sentence on a mischaracterization of his criminal history. Because the record reflects that the district court may have based the sentence on the mistaken belief that Cardona-Elias had two prior convictions for illegal reentry, rather than one conviction for illegal reentry and one for illegal entry, we vacate and remand for resentencing. *See United States v. Carty*, 520 F.3d 984, 993 (9th Cir. 2008) (en banc) (selection of sentence based on clearly erroneous facts constitutes procedural error).

In light of this disposition, we need not reach Cardona-Elias's remaining claim of sentencing error.

VACATED and REMANDED.