

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 09-12387
Non-Argument Calendar

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| FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT Nov. 16, 2009 THOMAS K. KAHN CLERK |
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D. C. Docket No. 08-00070-CR-CLS-RRA

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CIRILO RODRIGUEZ-MARTIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Alabama

(November 16, 2009)

Before BLACK, PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

Cirilo Rodriguez-Martin, who conditionally pleaded guilty to reentering the United States illegally, 8 U.S.C. § 1326(a), appeals the denial of his motion to dismiss his indictment based on defects in his underlying removal proceedings. See id. § 1326(d). Rodriguez-Martin argues that his removal proceedings were “perfunctory” and his removal was ordered “on the mistaken assumption” that he had been convicted of an aggravated felony. We affirm.

We review de novo the denial of Rodriguez’s collateral challenge to his prior removal proceedings. United States v. Zelaya, 293 F.3d 1294, 1297 (11th Cir. 2002). To prevail, Rodriguez-Martin had to prove that he had exhausted administrative remedies available to him to seek relief from the order of removal, he was deprived of an opportunity for judicial review during the removal proceedings, and “the entry of the order was fundamentally unfair.” Id. at 1298. Rodriguez-Martin failed to satisfy these requirements.

Rodriguez-Martin declined to avail himself of administrative remedies or pursue opportunities for judicial review of the order of removal. Rodriguez-Martin failed to challenge the administrative closure of his appeal to the Board of Immigration Appeals and, even after the Board reinstated the appeal, Rodriguez-Martin did not appear in the proceeding or move for reconsideration after the Board dismissed his appeal. Rodriguez-Martin also did not seek a rescission of the

order of removal. See id. at 1297. The district court did not err by denying Rodriguez-Martin's motion to dismiss his indictment.

Rodriguez-Martin's conviction is **AFFIRMED**.