

DEC 31 2012

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NOT FOR PUBLICATION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.

J. JESUS VEGA-ARROYO,

Defendant - Appellant.

No. 10-50395

D.C. No. 3:09-cr-02798-DMS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding

Submitted December 19, 2012**

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

J. Jesus Vega-Arroyo appeals from the district court's judgment and challenges his guilty-plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction under 28 U.S.C. § 1291, and

* 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).

we affirm.

Vega-Arroyo contends that the district court erred by denying his motion to dismiss the indictment. He asserts that his underlying removal order is defective because his waiver of his right to counsel in the removal proceedings was ineffective. We review this claim de novo. *See United States v. Reyes-Bonilla*, 671 F.3d 1036, 1042 (9th Cir.), *cert. denied*, 133 S. Ct. 322 (2012).

Vega-Arroyo was required to prove actual prejudice in relation to his claim of ineffective waiver of his right to counsel, because he had a prior aggravated felony conviction at the time of the removal proceedings. *See id.* at 1049. Because Vega-Arroyo made no attempt to prove actual prejudice, the district court properly denied his motion to dismiss the indictment.

AFFIRMED.