

MAY 21 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NOT FOR PUBLICATION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.

JUAN MONTES-TORRES,

Defendant - Appellant.

No. 12-50159

D.C. No. 3:11-cr-01424-MMA

MEMORANDUM*

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

Submitted May 14, 2013**

Before: LEAVY, THOMAS, and MURGUIA, Circuit Judges.

Juan Montes-Torres appeals from the district court’s judgment and challenges the order denying his motion to dismiss the indictment charging him with being a deported alien found in the United States, in violation of 8 U.S.C. § 1326. We dismiss.

* 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).

The government argues that this appeal should be dismissed because Montes-Torres waived his right to appeal pretrial constitutional defects when he entered an unconditional guilty plea. We review de novo whether a defendant waived his right to appeal. *See United States v. Arias-Espinosa*, 704 F.3d 616, 618 (9th Cir. 2012).

When Montes-Torres entered his guilty plea, he did not preserve his right to challenge the district court's denial of his motion to dismiss the indictment. Thus, he waived his right to bring this appeal. *See United States v. Lopez-Armenta*, 400 F.3d 1173, 1175 (9th Cir. 2005). Contrary to Montes-Torres's contention, the district court's statement at the subsequent sentencing hearing that he retained the right to appeal did not restore his right to appeal the court's denial of his motion to dismiss. *See id.* at 1176-77.

DISMISSED.