**NOT FOR PUBLICATION**

FILED

MAR 13 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| UNITED STATES OF AMERICA,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>UMBERTO HERNANDEZ-VASQUEZ,<br><br>Defendant-Appellant. | No. 17-50145<br><br>D.C. No.<br>3:15-cr-02517-WQH-1<br><br>MEMORANDUM* |

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| UNITED STATES OF AMERICA,<br><br>Plaintiff-Appellee,<br><br>v.<br><br>UMBERTO HERNANDEZ-VASQUEZ,<br>AKA Hilberto Vasquez,<br><br>Defendant-Appellant. | No. 17-50177<br><br>D.C. No.<br>3:11-cr-00224-WQH-1 |

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Argued and Submitted February 4, 2019
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: WARDLAW and BEA, Circuit Judges, and DRAIN,** District Judge.

In this consolidated appeal, Umberto Hernandez-Vasquez challenges his conviction and sentence for illegal reentry into the United States in violation of 8 U.S.C. § 1326 and, based on this illegal reentry, the district court's revocation of supervised release from a prior conviction. We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm.

1. The district court did not clearly err in finding that Hernandez made an unequivocal request to represent himself under *Faretta v. California*, 422 U.S. 806 (1975). Hernandez affirmed on multiple occasions that he wished to represent himself if the court would not appoint him new counsel, which established a conditional waiver. *See United States v. Mendez-Sanchez*, 563 F.3d 935, 946 (9th Cir. 2009) ("A conditional waiver can be stated unequivocally, as for example when a defendant says in substance: 'If I do not get new counsel, I want to represent myself.'").

2. The district court properly determined that Hernandez knowingly and intelligently waived his right to counsel. Contrary to Hernandez's assertion that the district court's *Faretta* colloquy was inadequate, "'a fair reading of the record as a whole' indicates that [Hernandez] 'understood the dangers and disadvantages

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** The Honorable Gershwin A. Drain, United States District Judge for the Eastern District of Michigan, sitting by designation.

of self-representation.'" *United States v. Turner*, 897 F.3d 1084, 1103 (9th Cir. 2018). The district court's "dangers and disadvantages" admonitions tracked the model language suggested in our precedent; the court "specifically ascertained whether [Hernandez] understood that he would be expected to abide by the same complex rules as an experienced attorney," reviewed "in broad terms" the rules concerning trial procedure, and "repeatedly emphasized the importance of counsel." *United States v. Erskine*, 355 F.3d 1161, 1168 (9th Cir. 2004).

That Hernandez lacked understanding of the substantive rules governing his trial does not defeat the adequacy of the district court's *Faretta* colloquy. *See Lopez v. Thompson*, 202 F.3d 1110, 1119 (9th Cir. 2000) (en banc). Nor does any part of the *Faretta* colloquy or the record as a whole suggest that, despite consistent affirmative answers to the court's questions, Hernandez did not actually understand the court's questions and warnings. Record evidence reflects the court's awareness and commensurate accommodation of Hernandez's intellectual limitations. For example, the court conducted its *Faretta* colloquy only after ordering a competency evaluation to ensure that Hernandez would fully understand the rights he would be waiving.

3. The district court did not clearly err in finding Hernandez mentally competent to represent himself under *Indiana v. Edwards*, 554 U.S. 164 (2008). *See United States v. Johnson*, 610 F.3d 1138, 1145 (9th Cir. 2010). Record

evidence indicates that Hernandez was "able 'to carry out the basic tasks needed to present his own defense without the help of counsel.'" *United States v. Ferguson*, 560 F.3d 1060, 1068 (9th Cir. 2009); *see also id.* at 1068–69 (noting the fact that the defendant "did absolutely nothing" at trial as an indication that *Edwards* might apply). As the district court correctly noted, the psychologists who evaluated Hernandez found no objective evidence that he suffered from a severe mental disorder "rendering him unable to understand the nature and consequences of the court proceedings against him or unable to assist properly in his defense." Thus, the evaluators' findings distinguish Hernandez from the severely mentally ill defendant in *Edwards*, who suffered from schizophrenia, was more than once found incompetent to stand trial, and filed "at least one undecipherable document." *United States v. Brugnara*, 856 F.3d 1198, 1214 (9th Cir. 2017).

**AFFIRMED.**