

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 27 2008

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL GAYTAN-SANCHEZ,

Defendant - Appellant.

No. 06-50558

D.C. No. CR-05-01652-WQH

MEMORANDUM*

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MANUEL GAYTAN-SANCHEZ,

Defendant - Appellant.

No. 06-50622

D.C. No. CR-02-03060-GT

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the Southern District of California
Gordon Thompson, Jr., District Judge, Presiding

Submitted May 20, 2008**

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

In these consolidated cases, Gaytan-Sanchez appeals from his jury-trial conviction and sentence for being a deported alien found in the United States, in violation of 8 U.S.C. § 1326, and from the sentence imposed following the revocation of supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Gaytan-Sanchez has waived any contentions regarding his § 1326 conviction and sentence as he failed to address them in his opening brief. *See United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005).

Gaytan-Sanchez contends that the supervised release revocation procedures set forth in 18 U.S.C. § 3583(e)(3) violate the holding of *Apprendi v. New Jersey*, 530 U.S. 466 (2000). This contention is foreclosed by *United States v. Huerta-Pimental*, 445 F.3d 1220, 1223-25 (9th Cir. 2006). We reject Gaytan-Sanchez's contention that *Huerta-Pimental* is no longer good law in light of *Cunningham v.*

** The panel unanimously finds this case suitable for decision without oral argument. *See Fed. R. App. P. 34(a)(2)*.

California, 127 S. Ct. 856 (2007). See *United States v. Ray*, 484 F.3d 1168, 1172 (9th Cir. 2007) (applying *Huerta-Pimental* post-*Cunningham*).

AFFIRMED.