

SEP 27 2007

**CATHY A. CATTERSON, 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NOT FOR PUBLICATION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.

ROBERT R. DEARINGER,

Defendant - Appellant.

No. 06-30516

D.C. No. CR-04-00361-MJP

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Robert Ray Dearinger appeals his resentencing on remand from this court for his conviction for bank robbery in violation of 18 U.S.C. § 2113(a). Dearinger challenges the district court's finding that his prior convictions are predicate

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

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

offenses under the career offender provisions of U.S.S.G. § 4B1.1. In the prior appeal, this court held that Dearing's contention was precluded by *United States v. Murillo*, 422 F.3d 1152 (9th Cir. 2005). Dearing concedes that his claim is barred by law of the case, but raised it to preserve the issue on appeal. Because we conclude that Dearing's sole claim is precluded by law of the case doctrine, *see United States v. Garcia*, 77 F.3d 274, 276 (9th Cir. 1996), we affirm his sentence.

AFFIRMED.