

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 26 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARTURO TORRES-CASTILLO,

Defendant - Appellant.

No. 06-50661

D.C. No. CR-02-02367-GT

MEMORANDUM*

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

Submitted October 17, 2007**
Pasadena, California

Before: PREGERSON, HAWKINS, and FISHER, Circuit Judges.

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

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

Arturo Torres-Castillo (“Torres”) timely appeals his twelve-month sentence for violating the conditions of his supervised release. Torres argues that the revocation of his supervised release and the corresponding twelve-month sentence violated the statutory maximum for his crime, the Fifth and Sixth Amendments, and the Separation of Powers doctrine. All of these arguments have previously been rejected by this court.

In 2002, Torres pled guilty to two counts of illegal entry under 8 U.S.C. § 1325 and received a total of thirty months in prison and twelve months of supervised release. Torres completed his sentence in 2004 and began his supervised release. In 2005, he then attempted to reenter the country and was given a twelve-month sentence for violating a condition of his supervised release. Torres argues that because thirty months constituted the statutory maximum, his subsequent twelve-month sentence for violating his supervised release constituted a statutory maximum violation. We have previously rejected such a claim. *United States v. Soto-Olivas*, 44 F.3d 788, 790 (9th Cir. 1995) (holding that the supervised release statute, 18 U.S.C. § 3583, “authorize[s] a period of supervision, and perhaps imprisonment, beyond what is provided by the . . . substantive criminal laws.”).

The revocation of supervised release does not constitute double jeopardy under the Fifth Amendment. *Id.* at 791 (“[P]unishment imposed upon revocation

of supervised release is punishment for the original crime, not punishment for the conduct leading to revocation”). Nor does the revocation of supervised release violate the Sixth Amendment. *See United States v. Huerta-Pimental*, 445 F.3d 1220, 1224-25 (9th Cir. 2006). We also do not find any merit in Torres’s due process argument.

Torres’s argument that the revocation of supervised release violates the Separation of Powers doctrine is foreclosed by *United States v. Mejia-Sanchez*, 172 F. 3d 1172, 1175 (9th Cir. 1999) (“[N]othing in [the supervised release] process impermissibly interferes with a function reserved exclusively for the Executive”).

Finally, Torres was given proper notice of the conditions of his supervised release, both in written form and at his sentencing.

AFFIRMED.