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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JESUS MADRID-CUEN,</p> <p>Defendant - Appellant.</p>

No. 07-10443

D.C. No. CR-05-00073-ECR-VPC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, District Judge, Presiding

Submitted December 4, 2008**
San Francisco, California

Before: TROTT, THOMAS, and GRABER, Circuit Judges.

Defendant Jesus Madrid-Cuen appeals the sentence for his conviction by guilty plea to unlawful re-entry by a deported, removed and/or excluded alien in violation of 8 U.S.C. § 1326(a). The district court sentenced Defendant to a term

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

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

of 63 months' imprisonment, which was based on a 16-level enhancement for a prior "crime of violence" conviction.

1. This court vacated and remanded Defendant's sentence twice, holding that the presentence report lacked the documents required to prove a prior burglary of a dwelling, and thus did not support a 16-level enhancement in sentencing for illegal entry following deportation. United States v. Madrid-Cuen, 244 F. App'x 119, 120 (9th Cir. 2007) (unpublished decision); United States v. Madrid-Cuen, 201 F. App'x 572, 573 (9th Cir. 2006) (unpublished decision).

2. Defendant's sentence is now before the court for a third time. The district court again applied the 16-level enhancement for a prior "crime of violence" conviction, relying on two documents from the municipal court: an "Information" and a "Pronouncement of Judgment" (collectively "IPJ"). The IPJ is an official court document that was prepared by neutral court officials who are charged by law to record proceedings accurately. Because of those characteristics, the IPJ is a judicial record comparable to the documents listed in Shepard v. United States, 544 U.S. 13, 16 (2005). See United States v. Snellenberger, 548 F.3d 699, 702 (9th Cir. 2008) (en banc) (per curiam) (holding that a court may rely on an official court document that was prepared by a neutral court official when

determining a defendant's sentence). Thus, the district court did not err by relying on the IPJ in support of the 16-level sentence enhancement.

3. The district court did not err in ruling that Defendant's prior conviction for burglary was a "crime of violence." When determining the applicability of a state crime to federal sentencing, we employ the modified categorical approach set out in Taylor v. United States, 495 U.S. 575 (1990); see also United States v. Aguila-Montes De Oca, 523 F.3d 1071 (9th Cir. 2008) (applying the modified categorical approach to California's burglary statute). Applying the modified categorical approach, we compare the elements of the generic crime of burglary with the specific crime to which defendant pleaded guilty. "[G]eneric burglary of a dwelling under the [Sentencing] Guidelines requires the unlawful or unprivileged entry into, or remaining in, a building or other structure that is a dwelling, with intent to commit a crime." Aguila-Montes De Oca, 523 F.3d at 1077. The IPJ provides sufficient evidence that the California crime to which Defendant pleaded constitutes generic burglary under the Guidelines.

4. The district court acted within its authority when it directed the probation officer to retrieve the IPJ. Probation officers are "to provide the trial judge with as much information as possible in order to enable the judge to make an informed decision." United States v. Belgard, 894 F.2d 1092, 1097 (9th Cir. 1990). In

providing that duty, the probation officer acts as a "neutral, information-gathering agent of the court." United States v. Horvath, 492 F.3d 1075, 1079 (9th Cir. 2007).

The IPJ is a judicially noticeable court document that contains information normally contained in a presentence report. Although the IPJ was not a part of the original report, the district court did not err in supplementing it by obtaining the IPJ.

AFFIRMED.