

IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MARIO GARCIA-HERNANDEZ,)
)
Defendant.)

Case No.08-10157-WEB

ORDER

Now before the court is the defendant, Mario Garcia-Hernandez, for sentencing. The defendant plead guilty to reentry after deportation subsequent to a conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2). The probation department prepared a presentence investigative report. The defendant filed one objection to the report.

The defendant objects to the incidents of criminal history included in the presentence report at paragraphs 39 and 40. He contends the criminal convictions are not his. The conviction listed in paragraph 39 is a 1993 conviction for Carry Malt Beverage in Public, Wichita Kansas Municipal Court. The presentence report shows the defendant was found guilty and fined. The conviction listed in paragraph 40 is a 1993 conviction for Temporary Deprivation of Property, Wichita Kansas Municipal Court. The defendant was found guilty and fined. It should be noted that at the time of sentencing, counsel for the defendant stated to the court that he had been provided copies of the records of the convictions listed in paragraphs 39 and 40. Counsel therefore withdrew the objections to the Report.

Additionally, the court notes the two criminal convictions listed in paragraphs 39 and 40 are assigned no criminal history points. The court finds the objection is irrelevant as it has no

effect on the defendant's sentence. The court therefore will not rule on the objection.

The Probation Officer in charge of this case shall see that a copy of this order is appended to any copy of the Presentence Report made available to the Bureau of Prisons.

SO ORDERED this 26 th day of November, 2008.

s/Wesley E. Brown
Wesley E. Brown, Senior U.S. District Judge