

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20299
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN GUARDADO-ORTEGA, also known as Jorge Guardado-Ortega,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:03-CR-438-ALL

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Juan Guardado-Ortega ("Guardado") appeals the sentence imposed following his guilty-plea convictions for use of a non-immigrant visa obtained by fraud and for illegal reentry following deportation subsequent to a conviction for an aggravated felony. Guardado argues that the district court erred by finding that his California felony convictions for possession of cocaine and possession of a controlled substance were aggravated felonies for purposes of U.S.S.G. § 2L1.2(b)(1)(C) and

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

8 U.S.C. § 1101(a)(43)(B), because his offenses were punishable only as misdemeanors under federal law.

Guardado's argument is foreclosed by this court's opinion in United States v. Hinojosa-Lopez, 130 F.3d 691, 694 (5th Cir. 1997). Accordingly, Guardado's sentence is AFFIRMED.