

June 13, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40440  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GABRIEL LOREDO-PECINA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:03-CR-976-ALL  
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ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before KING, DeMOSS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

This court affirmed the sentence of Gabriel Loredó-Pecina (Loredó). United States v. Loredó-Pecina, 149 F. App'x 312 (5th Cir. 2005). The Supreme Court vacated and remanded for further consideration in light of Lopez v. Gonzales, 127 S. Ct. 625 (2006). Mendoza-Torres v. United States, 127 S. Ct. 826 (2006).

Loredó argues that his prior Texas felony conviction for possession of a controlled substance does not qualify as an aggravated felony under U.S.S.G. § 2L1.2, in light of Lopez. He

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

also contends that his appeal is not moot despite his release from imprisonment and subsequent deportation.

In United States v. Rosenbaum-Alanis, \_\_\_ F.3d \_\_\_, No. 05-41400, 2007 WL 926832, \*1-2 (5th Cir. 2007), we held that an appellant's challenge to the characterization of a state offense as an aggravated felony under § 2L1.2 was moot when the appellant had completed his term of imprisonment and had been deported. The court could not grant relief because the defendant was barred from entering the United States, and therefore could not be resentenced. Rosenbaum-Alanis, 2007 WL 926832 at \*2. Because Loredó is barred from entering the United States and cannot be present for a resentencing proceeding as required by FED. R. CRIM. P. 43, we cannot grant his request to be resentenced. See id. Accordingly, Loredó's appeal is DISMISSED as moot.