

November 9, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40098
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEOPOLDO RIOS-CRUZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:03-CR-1390-ALL

Before BARKSDALE, DeMOSS, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Leopoldo Rios-Cruz raises arguments that are foreclosed by United States v. Alfaro-Hernandez, 453 F.3d 280, 282 (5th Cir. 2006), which held that, for purposes of determining the propriety of a sentence imposed following the revocation of the defendant's supervised release, where the statutes under which the defendant was convicted did not specify the felony class, the felony classification of the defendant's underlying offense is determined by the section defining the offense, not from the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

maximum Sentencing Guidelines sentence as calculated by the district court and applicable to the defendant. The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.