

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40008
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

September 27, 2007

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CARLOS ELIUD MOLINA-CANO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
No. 7:04-CR-760

Before REAVLEY, SMITH, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Carlos Molina-Cano appeals his guilty-plea conviction of and sentence for illegal reentry following deportation. He argues that the district court erroneously construed his Texas conviction of aggravated assault as a crime of violence

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

and incorrectly applied a sentence enhancement under U.S.S.G. § 2L1.2. Our recent decision in *United States v. Guillen-Alvarez*, 489 F.3d 197, 199-201 (5th Cir. 2007), renders Molina-Cano's argument unavailing.

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Molina-Cano challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that that issue is "fully foreclosed from further debate." *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202). Accord *United States v. Galvan-Lozano*, 2007 U.S. App. LEXIS 21849, at *1-*2 (5th Cir. Sept. 12, 2007) (per curiam).

AFFIRMED.