

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40711
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODOLFO ZARATE,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-01-CR-38-1

June 18, 2002

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Following the denial of his motion to suppress evidence seized during a traffic stop, Rodolfo Zarate was convicted in a bench trial for counts 1 and 2 of an indictment charging him with transportation of illegal aliens. Zarate has appealed the district court's finding at sentencing that he was not entitled to a two-level adjustment in offense level for acceptance of responsibility. Zarate argues that his case should be distinguished from this court's opinion in United States v.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Maldonado, 42 F.3d 906, 913-14 (5th Cir. 1995).** Zarate's argument is without merit. As in Maldonado, the dispositive evidence in this case was the very evidence which Zarate sought to suppress. See id. at 913. Under Maldonado, the district court's ruling was not "without foundation," see id. at 913-14, and must be

AFFIRMED.

** Zarate also contends that Maldonado was wrongly decided and that the issue has been raised to preserve it for en banc consideration or for Supreme Court review.