

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-20045  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SALVADOR ORTEGA-TINOCO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-01-CR-602-1  
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February 20, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Salvador Ortega-Tinoco ("Ortega") appeals the sentencing following his guilty plea for illegal reentry into the United States following deportation. Ortega argues that his prior conviction for possession of cocaine is not an aggravated felony under the November 1, 2001, Sentencing Guidelines § 2L1.2(b)(1)(C). Ortega also contends that the district court's order imposing the cost associated with his drug/alcohol treatment based upon his ability to pay to be determined by the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

probation officer impermissibly delegated the court's duties to the probation officer. Ortega acknowledges that his argument is foreclosed by United States v. Warden, 291 F.3d 363 (5th Cir. 2002), but he seeks to preserve it for further review.

Ortega's arguments regarding the definitions of "drug trafficking offense" and "aggravated felony" are foreclosed by the decision in United States v. Caicedo-Cuero, 312 F.3d 697 (5th Cir. 2002). Accordingly, the district court did not err in assessing the eight-level upward adjustment.

AFFIRMED.