

April 22, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40975
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN SANTILLAN-VILLA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-02-CR-144-ALL

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Juan Santillan-Villa (Santillan) appeals the sentencing following his guilty-plea conviction for being found in the United States after having been deported. Santillan contends that the district court did not comply with FED. R. CRIM. P. 32(c)(3)(A) at sentencing. The court asked Santillan whether he had discussed the presentence report with defense counsel, and Santillan has not established plain error. See 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Esparza-Gonzalez, 268 F.3d 272, 274 (5th Cir. 2001), cert. denied, 535 U.S. 991 (2002).

Santillan also contends that the sentence-enhancing provisions contained in 8 U.S.C. § 1326(b) are facially unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Santillan acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but seeks to preserve the issue for further review.

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). This court must follow Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984 (internal quotation marks and citation omitted). Accordingly, the judgment of the district court is AFFIRMED.