

July 10, 2003

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 02-41709
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOSE LUIS MORALES-FRANCO

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-02-CR-740-ALL

Before KING, Chief Judge, and WIENER and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Luis Morales-Franco pled guilty to a charge of being found unlawfully present in the United States after having been deported following convicted for a felony in violation of 8 U.S.C. § 1326(a) and (b)(1). He appeals his sentence, arguing that the district court lacked a proper basis for determining that his underlying conviction was a drug trafficking offense for purposes of U.S.S.G. § 2L1.2(b)(1)(A). However, the abstract of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

judgment relied upon by the district court reflected that Morales-Franco was convicted of selling marijuana. In the absence of any evidence to the contrary, the preponderance of the evidence supported the assessment of the sentencing enhancement. See United States v. Herrera-Solorzano, 114 F.3d 48, 50 (5th Cir. 1997).

As Morales-Franco concedes, his second argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998). In the absence of any convincing argument, the sentence imposed by the district court is AFFIRMED.