

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40183
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS MANUEL SAYAS-MONTOYA,

Defendant-Appellant.

* * * * *

Consolidated with

04-40213

* * * * *

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS MANUEL SAYAS,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Texas
USDC No. 1:03-CR-815-1

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

PER CURIAM:*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Luis Manuel Sayas-Montoya appeals from his guilty-plea conviction for illegal reentry after deportation as well as from the revocation of supervised release relating to a prior conviction for possession of marijuana with intent to distribute. He argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional in light of the Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), and that his sentence is improper under Blakely v. Washington, 124 S. Ct. 2531 (2004). These arguments are, as he concedes, foreclosed. See Almendarez-Torres v. United States, 523 U.S. 224 (1998); United States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). The judgments of the district court are AFFIRMED.