

May 27, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-41227
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RIGOBERTO DE PAZ-RIVAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(2:04-CR-72-ALL)

Before WIENER, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

An unpublished per curiam opinion and judgment of remand was filed in this appeal on April 7, 2005, and the mandate issued on April 29, 2005. This panel, proceeding sua sponte, has now reheard the captioned appeal and concludes that, in light of the previous issuance by the district court of an amended judgment that conformed to the agreed position of the government and the appellant, our original opinion was incorrect in ruling that the district court had lacked jurisdiction to enter its amended judgment. We are satisfied

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that our judgment vacating the district court's amended judgment and remanding for entry of the appropriate judgment was improvidently issued. Therefore, in the interest of judicial economy, our opinion, judgment, and mandate should be and hereby are recalled, and this appeal is dismissed as moot. In consequence, the amended judgment of the district court sentencing de Paz under 8 U.S.C. § 1326(a) only, for which the maximum imprisonment was 2 years, stands as the final judgment of that court.

OPINION, JUDGMENT, AND MANDATE WITHDRAWN; APPEAL DISMISSED AS MOOT; AMENDED JUDGMENT OF DISTRICT COURT AND SENTENCE IMPOSED THEREIN REINSTATED.