

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

April 15, 2008

No. 07-40054
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

WELMAN ALVARENGA-HERNANDEZ, also known as Wellman Alvarenga,
also known as Gwelman Alvarenza

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:06-CR-642-1

Before PRADO, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Welman Alvarenga-Hernandez (Alvarenga) appeals his sentence for illegal reentry following deportation. Specifically, Alvarenga challenges the enhancement of his sentence based upon the district court's determination that his prior conviction for second degree assault is a crime of violence for purposes of U.S.S.G. § 2L1.2(b)(1)(C). Because he has been released from prison and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

deported to Mexico, his appeal of his sentence is moot. See *United States v. Rosenbaum-Alanis*, 483 F.3d 381, 383 (5th Cir. 2007).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Alvarenga challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1995). *United States v. Pineda-Arellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008).

APPEAL DISMISSED IN PART; JUDGMENT AFFIRMED IN PART.