

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 26, 2010

No. 09-20779
Conference Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS RODRIGUEZ MARTINEZ, also known as Jose Luis Rodriguez, also known as Jose Luis Rodriguez-Martinez,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CR-339-1

Before SMITH, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Luis Rodriguez Martinez (Rodriguez) appeals the sentence imposed following his conviction for illegal reentry after deportation under 8 U.S.C. § 1326. Rodriguez contends that the district court erred by imposing a 16-level crime of violence enhancement based on his prior Texas conviction for sexual assault of a child, which is a violation of Texas Penal Code § 22.011(a)(2). He argues that this conviction does not constitute the enumerated offense of sexual

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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abuse of a minor or statutory rape under the Guidelines because an offense under § 22.011 can be committed against a victim who is only 16 years of age. Rodriguez concedes that his argument is foreclosed and moves for summary affirmance to preserve the issue for appeal.

As Rodriguez concedes, his argument is foreclosed by *United States v. Castro-Guevarra*, 575 F.3d 550 (5th Cir.), *cert. denied*, 130 S. Ct. 649 (2009). Accordingly, his motion for summary affirmance is GRANTED and the judgment of the district court is AFFIRMED.