

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-11257
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAMIRO TERRAZAS-AVITIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:00-CR-106-1-Y

May 24, 2001

Before POLITZ, JOLLY, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Ramiro Terrazas-Avitia on appeal seeks leave to withdraw and has filed a brief as required by Anders v. California.¹ Terrazas has received a copy of counsel's brief and has filed a response contending that the felony conviction that resulted in his increased sentence under 8

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

¹386 U.S. 738 (1967).

U.S.C. § 1326(b)(2) was an element of the offense that should have been alleged in the indictment. He further contends that the holding of Apprendi v. New Jersey² places the authority of Almendarez-Torres v. United States³ in question and that, based upon Apprendi, his sentence was in excess of the statutory maximum.

Our review of the record, counsel's brief, and Terrazas's response thereto discloses no nonfrivolous appellate issue. Apprendi did not overrule Almendarez-Torres.⁴

Counsel's motion for leave to withdraw is GRANTED and counsel is excused from further responsibilities herein. The appeal is DISMISSED. See 5TH CIR. R. 42.2.

²530 U.S. 466, 489-90 (2000)

³523 U.S. 224 (1998)

⁴Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001).