

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20318
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAIME ALBERTO ARGUETA-VENTURA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-99-CR-596-1

October 15, 2001

Before DAVIS, BENAVIDES and STEWART, Circuit Judges.

PER CURIAM:*

Jaime Alberto Argueta-Ventura appeals the 57-month sentence imposed following his plea of guilty to illegal reentry into in the United States after deportation, a violation of 8 U.S.C. § 1326.

Argueta-Ventura contends that his prior aggravated-felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense that should have been charged in the indictment. Argueta-Ventura acknowledges that his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review in light of the decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 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). Argueta-Ventura's argument is foreclosed.

Argueta-Ventura argues that the district court erred in denying him a downward departure based on his cultural assimilation into this country in the mistaken belief that it lacked the authority to depart. The record does not support appellant's argument. As we read the record, the district court denied the downward departure because it concluded that the departure was not justified under the circumstances.

For the above reasons, we affirm appellant's conviction and sentence.

AFFIRMED.