

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40886
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOAQUIN PINA-CLIVILLE

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-00-CR-204-1

February 15, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

In this appeal following his guilty-plea conviction for illegally reentering the United States after having been deported, in violation of 8 U.S.C. § 1326(a) and (b)(2), Joaquin Pina-Cliville (Pina) argues that a prior felony conviction is an element of the offense of illegal reentry and not merely a sentencing factor. Pina acknowledges that his 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 the light of Apprendi v. New Jersey, 120 S. Ct. 2348

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(2000), wherein the Supreme Court stated that it was arguable that Almendarez-Torres was decided incorrectly. In light of the clear precedent of Almendarez-Torres, Pina fails to show that his sentence should be vacated. See United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), petition for cert. filed, (Jan. 26, 2001)(No. 00-8299).

The judgment of the district court is AFFIRMED.