

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-50082
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE MAURO PUENTES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-99-CR-1194-ALL-H

November 1, 2001

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

PER CURIAM:*

Jose Mauro Puentes appeals his sentence following his conviction for illegal reentry into the United States after deportation. Puentes contends that the district court erred in applying the 16-level sentencing enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(A), as his pre-deportation Arizona felony conviction for aggravated driving while intoxicated ("DWI") does not constitute a crime of violence under 18 U.S.C. § 16. He further asserts that his felony DWI conviction was an element of the offense that should have been charged in the indictment,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

although he concedes that that argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998).

Because an intentional use of force is virtually never employed to commit the 1992 version of the Arizona felony offense of aggravated DWI, the offense is not a crime of violence as defined by 18 U.S.C. § 16(b). See Ariz. Rev. Stat. Ann. § 28-697(A) (West 1992); United States v. Chapa-Garza, 243 F.3d 921, 927 (5th Cir. 2001) (holding that the Texas felony offense of DWI is not a crime of violence). Therefore, Puentes' pre-deportation Arizona aggravated DWI conviction is not an aggravated felony conviction under U.S.S.G. § 2L1.2(b)(1)(A), and the district court erred in applying the 16-level sentencing enhancement. See Chapa-Garza, 243 F.3d at 923-24. Puentes' sentence is VACATED, and this case is REMANDED for resentencing.