

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-51146
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JULIO CESAR VELA-ORNELAS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-00-CR-885-1-H
- - - - -

November 8, 2001

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

PER CURIAM:*

Julio Cesar Vela-Ornelas appeals the 46-month term of imprisonment imposed following his guilty plea conviction of being found in the United States following removal, in violation of 8 U.S.C. § 1326. He contends that the district court erred by increasing his offense level 16 levels pursuant to U.S.S.G. § 2L1.2(b)(1)(A) based on his prior felony conviction of driving while intoxicated ("DWI"). He notes pursuant to this court's decision in United States v. Chapa-Garza, 243 F.3d 921, 927 (5th Cir. 2001), rehearing and rehearing en banc denied, 262 F.3d 479

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 2001), that a Texas felony DWI conviction is not a "crime of violence" as defined in 18 U.S.C. § 16(b) and thus is not an aggravated felony for the purpose of a 16-level adjustment under U.S.S.G. § 2L1.2(b)(1)(A). The Government has filed an unopposed motion to remand for resentencing acknowledging that the district court, which did not have the benefit of Chapa-Garza when it sentenced Vela-Ornelas, erred in applying the 16-level adjustment.

The Government's motion to remand is GRANTED, the sentence is VACATED, and this case is REMANDED for resentencing in light of Chapa-Garza. The motion to expedite is DENIED.