

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20376
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ESPIRIDION BARRAGAN-CASTILLO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CR-718-ALL

December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

The Federal Public Defender appointed to represent Espiridion Barragan-Castillo has filed a motion for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Barragan-Castillo filed a response, arguing that his prior aggravated felony conviction was an element of the offense which should have been alleged in the indictment. He acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 226-27 (1998), but he seeks to preserve the issue for Supreme Court review in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

light of Apprendi v. New Jersey, 530 U.S. 466 (2000). This argument lacks merits as the indictment did allege that Barragan-Castillo had a prior aggravated felony conviction. Our independent review of the brief and the record discloses no nonfrivolous issue in this direct appeal. Accordingly, the motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED.

See 5TH CIR. R. 42.2.