

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21131
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROSENDO CARRILLO-CRUZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-516-ALL

November 14, 2002

Before BARKSDALE, DeMOSS, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Rosendo Carrillo-Cruz appeals his bench-trial conviction for illegal reentry after deportation following an aggravated felony. He first argues that the dismissal of the original indictment for Speedy Trial Act violations should have been with prejudice. The district court properly considered the statutory factors of 18 U.S.C. § 3162(a)(2), and its supporting factual findings were not clearly in error. United States v. Taylor, 487 U.S. 326, 337

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(1988). Accordingly, we find that the district court did not abuse its discretion in dismissing the first indictment without prejudice and in permitting reindictment. See United States v. Blevins, 142 F.3d 223, 224 (5th Cir. 1998).

Carrillo-Cruz also avers that 8 U.S.C. § 1326(b), which was used to enhance his sentence based on his prior aggravated felony conviction, is unconstitutional. Carrillo-Cruz acknowledges that his argument is foreclosed by the Supreme Court's decision in 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, 490 (2000).

Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90, 496; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001). Carrillo-Cruz's argument is foreclosed. Accordingly, the judgment of the district court is AFFIRMED.