

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-20609  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARIO HUMBERTO GUERRERO-CABRERA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-02-CR-14-1  
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February 20, 2003

Before WIENER, EMILIO M. GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Mario Humberto Guerrero-Cabrera appeals his conviction for reentering the United States without permission after deportation following an aggravated felony. Guerrero-Cabrera concedes that this court held that felony possession of a controlled substance is a drug-trafficking offense, and therefore is an "aggravated felony" for purposes of U.S.S.G. § 2L1.2(b)(1)(C). United States v. Hinojosa-Lopez, 130 F.3d 691, 694 (5th Cir. 1997); United States v. Caicedo-Cuero, 312 F.3d 697, 706-11 (5th Cir. 2002).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Accordingly, the district court did not err in overruling Guerrero-Cabrera's objection to the eight-level enhancement imposed for his prior felony conviction for possession of cocaine.

Guerrero-Cabrera argues that the felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense that should have been charged in the indictment. He acknowledges that his argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998). This court must follow that decision until it is overruled by the Supreme Court. United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

AFFIRMED.