

June 25, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-21161
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO BATALLA-SANCHEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-02-CR-174-1

Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Ricardo Batalla-Sanchez ("Batalla-Sanchez") appeals the sentence following his guilty plea for illegal reentry into the United States following deportation. Batalla-Sanchez argues that his prior conviction for possession of marihuana is not an aggravated felony under the November 1, 2001, Sentencing Guidelines § 2L1.2(b)(1)(C). He also argues that the sentencing provisions in 8 U.S.C. § 1326(b)(1) & (b)(2) are unconstitutional based on Apprendi v. New Jersey, 530 U.S. 466 (2000). Batalla-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Sanchez concedes that his arguments are foreclosed, but he nevertheless seeks to preserve them for Supreme Court review.

Batalla-Sanchez' arguments regarding the definitions of "drug trafficking offense" and "aggravated felony" are foreclosed by our decision in United States v. Caicedo-Cuero, 312 F.3d 697, 705-11 (5th Cir. 2002), cert. denied, 123 S. Ct. 1948 (2003). Batalla-Sanchez' contention that the enhancement provisions in 8 U.S.C. § 1326(b)(1) & (b)(2) are unconstitutional lacks merit because Apprendi did not overrule Almendarez-Torres v. United States, 523 U.S. 24 (1998). See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

For the foregoing reasons, Batalla-Sanchez' sentence is AFFIRMED.