

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-40267  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JOSE ANTONIO SANTOS-MORENO

Defendant - Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-01-CR-1073-ALL  
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January 27, 2003

Before KING, Chief Judge, and DeMOSS and BENAVIDES, Circuit  
Judges.

PER CURIAM:\*

Jose Antonio Santos-Moreno ("Santos") appeals his guilty-  
plea conviction and sentence for being an alien unlawfully found  
in the United States after deportation pursuant to 8 U.S.C.  
§ 1326. He argues that the magistrate judge lacked jurisdiction  
to accept his guilty plea, that his indictment was defective  
under Apprendi v. New Jersey, 530 U.S. 466 (2000), and that his

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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that this opinion should not be published and is not precedent  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.

prior cocaine-possession conviction was not an aggravated felony for purposes of U.S.S.G. § 2L1.2(b)(1)(C)(2001).

Santos consented to entry of his plea by a magistrate judge and did not object in the district court; he therefore waived any procedural error in that regard. See United States v. Bolivar-Munoz, 313 F.3d 253, 255 (5th Cir. 2002). Santos concedes that his Apprendi argument is foreclosed by United States v. Rodriguez-Montelongo, 263 F.3d 429, 434 (5th Cir. 2001), and states that he raises the issue only to preserve it for possible Supreme Court review. The issue is foreclosed. Santos' challenge to the adjustment of his offense level under U.S.S.G. § 2L1.2(b)(1)(C)(2001) is without merit. See United States v. Caicedo-Cuero, 312 F.3d 697, 706-11 (5th Cir. 2002).

AFFIRMED.