

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40648
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE DURAN-RIVAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-01-CR-1228-ALL

February 20, 2003

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

PER CURIAM:*

Jose Duran-Rivas (Duran) appeals his guilty-plea conviction for illegal reentry after deportation. He argues for the first time on appeal that 8 U.S.C. § 1326(b)(2) is unconstitutional because it does not require the prior aggravated felony conviction to be proven as an element of the offense. Duran concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998). He nevertheless seeks to preserve this issue for Supreme Court review in light of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; see also United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 531 U.S. 1202 (2001). Therefore, Duran's argument is foreclosed.

Duran also contends for the first time on appeal that the magistrate judge lacked jurisdiction to conduct his guilty plea hearing because there was no order of referral from the district court. By failing to object in the district court to the magistrate judge's exercise of authority, Duran waived his right to challenge this procedural defect in his plea proceeding. United States v. Bolivar-Munoz, 313 F.3d 253, 257 (5th Cir. 2002).

AFFIRMED.