

April 24, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 02-40856
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FREDIE FERNANDO ARIAS-ORTEGA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-02-CR-45-ALL

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Fredie Fernando Arias-Ortega ("Arias") 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 prior cocaine-possession conviction was not an aggravated felony for purposes of U.S.S.G. § 2L1.2(b)(1)(C) (2001), and that 8 U.S.C. § 1326 is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000).

Arias concedes that his arguments are foreclosed by this court's precedent; he raises these issues only to preserve them for possible Supreme Court review. See United States v. Bolivar-Munoz, 313 F.3d 253, 256-57 (5th Cir. 2002), cert. denied, 2003 WL 729161 (U.S. Mar. 31, 2003); United States v. Caicedo-Cuero, 312 F.3d 697, 706-11 (5th Cir. 2002), petition for cert. filed, (U.S. Mar. 19, 2003)(No. 02-9747); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). His arguments are foreclosed.

AFFIRMED.