

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41785
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ELOY MARTINEZ-VASQUEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-02-CR-1005-ALL

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Eloy Martinez-Vasquez (Martinez) appeals his guilty-plea conviction for illegal reentry into the United States following deportation in violation of 8 U.S.C. § 1326. For the first time on appeal, Martinez argues that the sentencing provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Martinez acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the issue for Supreme Court review. Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

Martinez also challenges a condition of supervised release set forth in the written judgment that prohibits him from possessing "any other dangerous weapon." Martinez argues that this provision must be deleted from the written judgment because the district court did not mention the condition when it orally pronounced sentence. We find no error in the written judgment. See United States v. Torres-Aguilar, 352 F.3d 934, 935-38 (5th Cir. 2003).

AFFIRMED.