

April 23, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-51002
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUSTAVO BELTRAN-DEL MORO,
also known as Rigoberto Del Moro,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-02-CR-896-ALL-PRM

Before DAVIS, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Gustavo Beltran-Del Moro appeals his guilty plea conviction and sentence for being found in the United States after deportation/removal in violation of 8 U.S.C. § 1326. He contends that the district court erred in determining that his prior state felony conviction for possession of cocaine was a "drug trafficking" crime and thus an "aggravated felony" which

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

warranted an eight-level increase in his base offense level under U.S.S.G. § 2L1.2(b)(1)(C)(2001).

Beltran-Del Moro's argument is foreclosed by United States v. Caicedo-Cuero, 312 F.3d 697, 706-11 (5th Cir. 2002), petition for cert. filed, (U.S. March 19, 2003)(No. 02-9747), which held that simple possession of a controlled substance is a drug trafficking crime for purposes of the aggravated felony enhancement in U.S.S.G. § 2L1.2(b)(1)(C)(2001). Because Beltran-Del Moro's argument is foreclosed, the Government has moved for a summary affirmance. It asks that an appellee's brief not be required. The motion is GRANTED. The judgment of the district court is AFFIRMED.

MOTION GRANTED; AFFIRMED.