

February 18, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40211  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE GARCIA-GONZALEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-02-CR-1007-ALL  
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Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:\*

Jorge Garcia-Gonzalez (Garcia) appeals his sentence imposed following his guilty plea conviction for illegal reentry following deportation, a violation of 8 U.S.C. § 1326. Garcia raises an issue that he concedes is foreclosed, but he seeks to preserve it for further review.

Garcia argues that his prior conviction for possession of a controlled substance is not an aggravated felony under U.S.S.G. § 2L1.2(b)(1)(C). This argument is foreclosed by our decision in

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Caicedo-Cuero, 312 F.3d 697, 705-711 (5th Cir. 2002), *cert. denied*, 123 S. Ct. 1948 (2003). Garcia's argument that the rule of lenity is applicable is without merit because the meaning of "aggravated felony" is not ambiguous. See United States v. Rivera, 265 F.3d 310, 312-13 (5th Cir. 2001).

AFFIRMED.