

FILED

December 23, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40250
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MAGDALENO SANCHEZ-LOPEZ

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-02-CR-1133-ALL

Before KING, Chief Judge, and JOLLY and PRADO, Circuit Judges.

PER CURIAM:*

Magdaleno Sanchez-Lopez pleaded guilty to one count of illegal reentry after deportation in violation of 8 U.S.C. § 1326. The district court sentenced Sanchez-Lopez to 24 months of imprisonment and three years of supervised release.

Sanchez-Lopez argues that 8 U.S.C. § 1326(b) is unconstitutional. In Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), the Supreme Court held that the enhanced

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

penalties in 8 U.S.C. § 1326(b) are sentencing provisions, not elements of separate offenses. Sanchez-Lopez concedes that his argument is foreclosed by Almendarez-Torres, but he asserts that the decision has been cast into doubt by Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). He seeks to preserve his argument for further 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). This court must follow Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984 (internal quotation marks and citation omitted). This issue is without merit.

Sanchez-Lopez also argues that there is a conflict between the written and oral judgments. The written judgment contains a condition of supervised release prohibiting the possession of a dangerous weapon; the oral pronouncement of sentence did not mention this provision. For the reasons outlined in United States v. Torres-Aguilar, __ F.3d __ (5th Cir. Dec. 3, 2003, No. 03-40055), we conclude that the district court's omission of the dangerous weapon prohibition during the oral pronouncement of sentence did not create a conflict with the sentence set forth in the judgment.

AFFIRMED.