

February 18, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40447
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SANTIAGO YANEZ-BRILLANO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-02-CR-1183-ALL

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

PER CURIAM:*

Santiago Yanez-Brillano appeals his guilty plea conviction and sentence for illegal reentry following deportation in violation of 8 U.S.C. § 1326.

Yanez argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). Yanez concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235, 239-47 (1998). Apprendi did not overrule

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

Yanez also argues that the supervised release condition barring his possession of "any other dangerous weapon" must be stricken from the written judgment because it conflicts with the sentence as orally pronounced by the district court. The Sentencing Guidelines recommend that all defendants who have been convicted of a felony be prohibited from possessing any dangerous weapon during the term of supervised release. U.S.S.G. § 5D1.3(d)(1). "If the district court orally imposes a sentence without stating the conditions applicable to this period of supervision, the judgment's inclusion of conditions that are mandatory, standard, or recommended by the Sentencing Guidelines does not create a conflict with the oral pronouncement." United States v. Torres-Aguilar, 352 F.3d 934, 938 (5th Cir. 2003).

Therefore, the judgment of the district court is AFFIRMED.