

July 9, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41696
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE ANIBAL GALVEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
No. B-03-CR-475-1

Before SMITH, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Jorge Galvez appeals his guilty-plea conviction and sentence for illegal reentry following deportation. He first argues that the district court erred in finding that his prior state misdemeanor conviction for sexual abuse of a person under fourteen qual-

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

ified as an aggravated felony under 8 U.S.C. § 1101(a)(43)(A) and erred in increasing his offense level by eight pursuant to U.S.S.G. § 2L1.2(b)(1)(C).

We have reviewed the record and briefs and conclude that the district court did not err in applying the eight-level increase, because Galvez's state sexual abuse conviction qualified as an aggravated felony under § 1101(a)(43)(A). See United States v. Urias-Escobar, 281 F.3d 165, 166-68 (5th Cir.), cert. denied, 536 U.S. 913 (2002).

Galvez argues next that the "felony" and "aggravated felony" provisions found at 8 U.S.C. § 1326(a) and (b) are unconstitutional sentencing provisions. He acknowledges that his argument is foreclosed, but he seeks to preserve the issue for possible Supreme Court review in light of Apprendi v. New Jersey, 530 U.S. 466 (2000). As Galvez concedes, this issue is foreclosed. See Almenarez-Torres v. United States, 523 U.S. 224, 247 (1998); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

AFFIRMED.