

October 19, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20874  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS VENTURA ROSALES,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:04-CR-97-ALL  
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Before SMITH, GARZA and PRADO, Circuit Judges.

PER CURIAM:\*

Jesus Ventura-Rosales ("Ventura") appeals his sentence following his guilty-plea conviction for illegal reentry after deportation subsequent to conviction for an aggravated felony, in violation of 8 U.S.C. § 1326(a) and (b)(2). Ventura argues that the district court's upward departure pursuant to U.S.S.G. § 4A1.3 was erroneous because his prior offenses were not egregious, that the district court had a mistaken understanding of the facts, and that the district court failed adequately to explain the reasons for departure.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Ventura had an offense level of 13, a criminal history category of VI, and a Guidelines range of 33-41 months. The district court departed upward to an offense level of 15 and imposed a sentence of 51 months. The court explained that it was moving up incrementally two levels because of Ventura's long criminal history, which included numerous offenses for which no criminal history points were assigned, because Ventura had been deported on four prior occasions, and because of Ventura's likelihood to recidivate. Guided by the factors in 18 U.S.C. § 3553(a), we conclude that there is no reversible error and that the district court's sentence was reasonable for the reasons stated by the district court. See United States v. Simkanin, \_\_\_ F.3d \_\_\_, No. 04-10531, 2005 WL 1847218 at \*15-17 (5th Cir. Aug. 5, 2005); United States v. Smith, \_\_\_ F.3d \_\_\_, No. 03-10171, 2005 WL 1663784 at \*4-5 (5th Cir. July 18, 2005).

Ventura also argues that the felony and aggravated felony provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), but he correctly concedes that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224 (1998). We must follow the precedent set in Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." United States v. Mancia-Perez, 331 F.3d 464, 470 (5th Cir.), cert. denied, 540 U.S. 935 (2003)(internal quotation and citation omitted).

AFFIRMED.