

November 5, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40245  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

IVAN RICARDO CIFUENTES-CAYCEDO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:03-CR-252-1  
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Before JOLLY, HIGGINBOTHAM, and WIENER, Circuit Judges.

PER CURIAM:\*

Ivan Ricardo Cifuentes-Caycedo appeals his conviction after a jury trial for transporting an alien within the United States in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), (a)(1)(A)(v)(II), and (a)(1)(B)(ii). Cifuentes contends that the district court erred by admitting evidence of his prior conviction for aiding and abetting an undocumented alien to elude examination. Because the evidence was relevant and its probative value was not outweighed by any threat of prejudice, the district court did not

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

err, plainly or otherwise. See United States v. Beechum, 582 F.2d 898, 911 (5th Cir. 1978) (en banc).

Cifuentes contends that his sentence should be vacated in light of Blakely v. Washington, 124 S. Ct. 2531 (2004). We have held that Blakely does not apply to the United States Sentencing Guidelines. United States v. Pineiro, 377 F.3d 464 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263). He acknowledges that his argument is foreclosed by Pineiro, but he states that he is raising this issue to preserve it for possible Supreme Court review. A panel of this court cannot overrule a prior panel's decision in the absence of an intervening contrary or superseding decision by this court sitting en banc or by the United States Supreme Court. United States v. Lipscomb, 299 F.3d 303, 313 n.34 (5th Cir. 2002).

AFFIRMED.