

December 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40608
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTURO SAN MARTIN, also known as,
Ricardo Hernandez-Lozano,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:03-CR-683-ALL

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Arturo San Martin appeals his guilty-plea conviction and sentence for illegal reentry after deportation. He 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), and that his sentence is improper under Blakely v. Washington, 124 S. Ct. 2531 (2004). These arguments are, as he concedes, foreclosed. See Almendarez-Torres v. United States, 523 U.S. 224 (1998); United

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). San Martin's conviction and sentence are AFFIRMED.