

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-40223
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO ARTURO-CORDOBA, also known as
Roberto Cordova,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-1415-ALL

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Roberto Arturo-Cordoba appeals his sentence following his guilty-plea conviction of being a deported alien who reentered the United States illegally. Cordoba 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), requiring that his sentence be vacated and the matter remanded for resentencing. He recognizes that under Almendarez-Torres v. United States, 523 U.S. 224 (1998), relief

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

on this issue is foreclosed, but he states that he wishes to raise the issue to preserve it for further possible review by the Supreme Court.

In Almendarez-Torres, 523 U.S. at 235, the Supreme Court held that the enhanced penalties in 8 U.S.C. § 1326(b) are sentencing provisions, not elements of separate offenses. The Court further held that the sentencing provisions are constitutional. See id. at 239-47. Apprendi did not overrule Almendarez-Torres. See Apprendi, 530 U.S. at 489-90; see also United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000). 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. 2003)(quotation marks and citation omitted). The judgment of the district court is AFFIRMED.