

April 11, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-50524  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS NOE CASTILLO-SIERRA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 2:04-CR-887-ALL  
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Before JOLLY, DAVIS and OWEN, Circuit Judges.

PER CURIAM:\*

Luis Noe Castillo-Sierra (Castillo) appeals his guilty-plea conviction and sentence for illegal reentry into the United States following deportation. Castillo argues that the district court erred in enhancing his sentence under U.S.S.G.

§ 2L1.2(b)(1)(A)(ii) based on a prior Texas robbery conviction. Because Castillo did not raise this issue in the district court, review is limited to plain error. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc).

Under § 2L1.2(b)(1)(A)(ii), a defendant's base offense level is increased by 16 levels if he was previously deported after

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

being convicted of a crime of violence. Robbery is an offense enumerated as a crime of violence in the application notes to § 2L1.2. § 2L1.2, comment. (n.1(B)(iii)). Castillo has not shown that the district court's increase in his offense level pursuant to § 2L1.2 based on his prior robbery conviction, a specifically enumerated offense under the commentary to § 2L1.2, was a "clear or obvious" error. See United States v. Rayo-Valdez, 302 F.3d 314, 317 (5th Cir. 2002).

Castillo argues that 8 U.S.C. § 1326(b) is unconstitutional. He acknowledges that this argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998), but raises the argument to preserve it for further review. We have "repeatedly rejected arguments like the one made by [Castillo] and . . . held that Almendarez-Torres remains binding despite Apprendi v. New Jersey, 530 U.S. 466 (2000).]" United States v. Garza-Lopez, 410 F.3d 268, 276 (5th Cir.), cert. denied, 126 S. Ct. 298 (2005).

AFFIRMED.