

July 10, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-50727
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAMON REBOLLAR-MEDINA, also known as Sergio Garcia-Aguilar,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:05-CR-2723-ALL

Before DeMOSS, STEWART and PRADO, Circuit Judges.

PER CURIAM:*

Ramon Rebollar-Medina (Rebollar) appeals his conviction and sentence for illegal reentry following deportation. Rebollar argues that the district court erred in characterizing his state conviction for transporting cocaine as an aggravated felony under U.S.S.G. § 2L1.2, but he states that his argument is moot in light of his release from imprisonment. He also challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), but acknowledges that this argument is foreclosed in light of Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998).

The Government has filed a motion for summary affirmance, arguing that Rebollar's appeal is moot and foreclosed. Both parties have informed this court that Rebollar has been released from prison and has been deported.

In United States v. Rosenbaum-Alanis, ___ F.3d ___, No. 05-41400, 2007 WL 926832, *1-2 (5th Cir. 2007), we held that an appellant's challenge to the characterization of a state offense as an aggravated felony under § 2L1.2 was moot when the appellant had completed his term of imprisonment and had been deported. Accordingly, Rebollar's argument in this regard is moot. See Rosenbaum-Alanis, 2007 WL 926832 at *2. As such, the Government's motion is denied in part, and Rebollar's appeal is dismissed in part as moot.

Additionally, Rebollar's challenge to § 1326(b) is foreclosed in light of Almendarez-Torres. The Government's motion for summary affirmance is granted in part, and the judgment of the district court is affirmed in part.

MOTION GRANTED IN PART and DENIED IN PART; APPEAL DISMISSED IN PART; JUDGMENT AFFIRMED IN PART.