

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

February 10, 2009

Charles R. Fulbruge III
Clerk

No. 08-10514
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

MARGARITO MUNOZ-ASTELLO

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:07-CR-69-ALL

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Margarito Munoz-Astello appeals his guilty plea conviction and sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326. He argues (1) that the district court plainly erred in treating his federal drug conviction as a "drug trafficking crime" under U.S.S.G. § 2L1.2; (2) that his case should be remanded so the district court can consider the disparity created by early disposition programs; (3) that his sentence violates his equal protection rights; and (4) that the district court plainly erred in ordering that his sentence be

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

served consecutively to an unimposed state sentence. The Government has moved to supplement the record and for summary affirmance, or, in the alternative, for an extension of time to file an appellate brief. The Government's unopposed motion to supplement the record with the factual resume for Munoz-Astello's prior drug conviction under 21 U.S.C. § 841(a)(1) is granted.

Munoz-Astello's first appellate argument is without merit. A comparison of the statute and Guideline at issue shows that a conviction under § 841(a)(1) qualifies as a drug trafficking offense under § 2L1.2(b)(1)(A)(I). See § 841(a)(1); § 2L1.2, comment. (n.1(B)(iv)). Moreover, as Munoz-Astello concedes, his last three appellate arguments are foreclosed by our precedent. See *United States v. Gomez-Herrera*, 523 F.3d 554, 563 n.4 (5th Cir.), petition for cert. filed (July 2, 2008) (No. 08-5226); *United States v. Rodriguez*, 523 F.3d 519, 526 (5th Cir.), petition for cert. filed (June 30, 2008) (08-5101); *United States v. Brown*, 920 F.2d 1212, 1216-17 (5th Cir. 1991), (abrogation on other grounds recognized, *United States v. Candia*, 454 F.3d 468, 473 (5th Cir. 2006)). Munoz-Astello raises his last three arguments solely to preserve them for further review.

Accordingly, the district court's judgment is **AFFIRMED**. The Government's motions to supplement the record and for summary affirmance are **GRANTED**. The Government's alternative motion for an extension of time to file an appellate brief is **DENIED** as **MOOT**.