

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-10989
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

April 28, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN JOSE GARCIA-DE LA CRUZ,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:15-CR-33

Before DAVIS, JONES, and GRAVES, Circuit Judges.

PER CURIAM:*

Juan Jose Garcia-De La Cruz pleaded guilty to illegally reentering the United States after deportation. He objected to the presentence report arguing that his sentence should not have been enhanced pursuant to 8 U.S.C. § 1326(b). The district court overruled the objection. He received a within-guidelines sentence of 14 months of imprisonment and a 3-year term of supervised release.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Garcia-De La Cruz argues that his sentence should not have been enhanced pursuant to § 1326(b) based on his commission of a felony before his prior deportation because that felony was not pleaded in the instant indictment and proved beyond a reasonable doubt. He challenges the validity of *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 133 S. Ct. 2151 (2013). Garcia-De La Cruz concedes that his argument is foreclosed and raises it to preserve it for further review. In its unopposed motion for summary affirmance, the Government agrees that the issue is foreclosed and alternately moves for an extension of time to file a brief.

The motion for summary affirmance is GRANTED, the alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.