

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

March 24, 2008

\_\_\_\_\_  
No. 07-40841  
Summary Calendar  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ALFREDO VILLAFUERTE-RODRIGUEZ, also known as Alfredo Rodriguez-Villafuerte

Defendant-Appellant

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:07-CR-290-1  
\_\_\_\_\_

Before SMITH, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:\*

In the light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Alfredo Villafuerte-Rodriguez 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. This contention is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

235 (1998). See *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008).

Villafuerte also seeks our remanding for correction of a clerical error in the judgment, pursuant to Federal Rule of Criminal Procedure 36. The Government joins this request. This matter is remand for the limited purpose of correcting the judgment to reflect that Villafuerte was found guilty after a plea of not guilty. See FED. R. CRIM. P. 36.

AFFIRMED; REMANDED FOR THE LIMITED PURPOSE OF CORRECTING CLERICAL ERROR IN JUDGMENT.