

November 9, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40938
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GERONIMO FERNANDO HUEZO-FRANCO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:04-CR-215-ALL

Before DAVIS, SMITH, and DENNIS, Circuit Judges.

PER CURIAM:*

Geronimo Fernando Huezo-Franco appeals his conviction and sentence for illegal reentry after deportation.

Huezo argues that the "felony" and "aggravated felony" provisions of 8 U.S.C. § 1326(b)(1) and (2) are unconstitutional in light of the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000). Huezo's argument concerning the constitutionality of 8 U.S.C. § 1326(b) is, as he concedes, foreclosed. See Almendarez-Torres v. United States, 523 U.S.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

224, 235 (1998); United States v. Izaquierre-Flores, 405 F.3d 270, 277-78 (5th Cir.), cert. denied, 126 S. Ct. 253 (2005).

Huezo also contends that his sentence is improper under Blakely v. Washington, 124 S. Ct. 2531 (2004), and United States v. Booker, 125 S. Ct. 738 (2005). He concedes that the plain-error standard of review applies. Huezo has not shown that the district court would have imposed a different sentence under an advisory sentencing scheme. Thus, Huezo has not shown plain error in connection with his sentence. See United States v. Martinez-Lugo, 411 F.3d 597, 600-01 (5th Cir. 2005), cert. denied, ___ S. Ct. ___ (Oct. 11, 2005) (No. 05-6242).

The judgment of the district court is AFFIRMED.