

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 10, 2022

Lyle W. Cayce
Clerk

No. 21-51069
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE RENE CANTE-DONDIEGO,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:21-CR-895-1

Before HIGGINBOTHAM, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

Jose Rene Cante-Dondiego appeals his conviction and sentence for illegal reentry after deportation under 8 U.S.C. § 1326(a) and (b)(1). Cante-Dondiego argues that treating a prior felony or aggravated felony conviction that increases the statutory maximum under § 1326(b) as a sentencing factor,

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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rather than a separate element of the offense, violates the Constitution. He has filed an unopposed motion for summary disposition and a letter brief explaining that he has raised the issue only to preserve it for further review and correctly conceding that his argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See *United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019).

Because summary disposition is appropriate, see *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969), Cante-Dondiego's motion is GRANTED, and the judgment of the district court is AFFIRMED.