

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-11175
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDUARDO QUIRINO-LANDEROS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:00-CR-44-1-C

February 15, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Eduardo Quirino-Landeros (Quirino) appeals his conviction and sentence following his guilty plea to illegally reentering the United States after having been deported in violation of 8 U.S.C. § 1326(a)(1) and (b)(2). Quirino argues that his indictment was defective because it did not allege a prior felony conviction. Quirino concedes that his argument is foreclosed by United States v. Almendarez-Torres, 523 U.S. 224 (1998). Quirino contends, however, that Apprendi v. New Jersey, 120 S. Ct. 2348,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2362 (2000), casts doubt on Almendarez-Torres and that he is raising the argument to preserve it for Supreme Court review.

Although the Supreme Court noted in Apprendi that, arguably, Almendarez-Torres was incorrectly decided, the Court expressly declined to overrule Almendarez-Torres. Apprendi, 120 S. Ct. at 2362-63 & n.15; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), petition for cert. filed, (Jan. 26, 2001)(No. 00-8299). This court is compelled to follow the precedent set in Almendarez-Torres "unless and until the Supreme Court itself determines to overrule it." Dabeit, 231 F.3d at 984.

The judgment of the district court is AFFIRMED.