

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-51012
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BENITO RODRIGUEZ-ORTIZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-00-CR-72-ALL-JN

April 12, 2001

Before JOLLY, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Enrique Rodriguez-Ortiz appeals the 70-month sentence imposed following his plea of guilty to a charge of being found in the United States after deportation, a violation of 8 U.S.C. § 1326. For the first time on appeal, Rodriguez argues that the aggravated-felony conviction that resulted in his increased sentence under 8 U.S.C. § 1326(b)(2) was an element of the offense that should have been charged in the information to which he pleaded guilty.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Rodriguez acknowledges that his argument is foreclosed by the Supreme Court's decision in Almendarez-Torres v. United States, 523 U.S. 224 (1998), but he seeks to preserve the issue for Supreme Court review in light of the decision in Apprendi v. New Jersey, 120 S. Ct. 2348 (2000).

Apprendi did not overrule Almendarez-Torres. See Apprendi, 120 S. Ct. at 2362; United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000), cert. denied, 121 S. Ct. 1214 (2001). Rodriguez has failed to demonstrate error, plain or otherwise. Dabeit, 231 F.3d at 983-84. The judgment of the district court is

AFFIRMED.