

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21164
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS VILLAFRANCA-BENAVIDES,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-39-ALL

August 7, 2002

Before JOLLY, HIGGINBOTHAM and PARKER, Circuit Judges.

PER CURIAM:*

Carlos Villafranca-Benavides appeals his conviction and sentence for illegal reentry into the United States following deportation, in violation of 8 U.S.C. § 1326(a) and (b)(2). Villafranca-Benavides contends that the district court erred in delegating to the probation office the authority to determine his ability to pay the costs of drug abuse detection efforts, that 8 U.S.C. § 1326(b)(2) is unconstitutional on its face and as applied, that the district court erred in refusing to suppress evidence of Villafranca-Benavides' prior administrative

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

deportation, and that the district court's written judgment contains a clerical error.

Villafranca-Benavides' first three arguments are foreclosed by binding precedent. See United States v. Warden, 291 F.3d 363, 364-66 (5th Cir. 2002); United States v. Benitez-Villafuerte, 186 F.3d 651, 657-58 (5th Cir. 1999); Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). Accordingly, Villafranca-Benavides' conviction and sentence are AFFIRMED.

However, as the Government concedes, the district court's judgment erroneously states that Villafranca-Benavides pleaded guilty, when he was in fact found guilty after a bench trial on stipulated facts. This case is REMANDED so that the district court may correct its clerical error, pursuant to FED. R. CRIM. P. 36. See United States v. Sapp, 439 F.2d 817, 821 (5th Cir. 1971).

AFFIRMED; REMANDED FOR CORRECTION OF CLERICAL ERROR IN JUDGMENT.