

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40306
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAVIER HERNANDEZ-PESINA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-00-CR-1168-ALL

December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Javier Hernandez-Pesina appeals his guilty-plea conviction and sentence for illegal reentry after deportation. Hernandez contends that his indictment was insufficient because it failed to expressly allege general intent and that the district court erred in applying U.S.S.G. § 2L1.2(b)(1)(A) to increase his offense level because his pre-deportation state felony conviction was not an aggravated felony.

Hernandez concedes that his arguments are foreclosed by circuit precedent but seeks to preserve the issues for Supreme

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Court review. The arguments are foreclosed. See United States v. Berrios-Centeno, 250 F.3d 294, 298-300 (5th Cir.), cert. denied, 122 S. Ct. 288 (2001); United States v. Hinojosa-Lopez, 130 F.3d 691, 693-94 (5th Cir. 1997). The judgment of the district court is AFFIRMED.