

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

No. 01-41170

(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

HOMERO MENDEZ-ALVAREZ,

Defendant - Appellant.

Appeal from the United States District Court
For the Southern District of Texas
USDC No. L-01-CR-439-ALL

June 5, 2002

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

PER CURIAM:*

Homero Mendez-Alvarez appeals his guilty-plea conviction for illegal reentry into the United States following deportation after an aggravated felony conviction. Mendez-Alvarez asserts, and the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Government concedes, that the district court's written judgment does not comport with its oral pronouncement of sentence.

At sentencing, the district court orally stated that the second and third counts of Mendez-Alvarez's indictment were dismissed. In its written judgment, however, the district court failed to address those additional counts. The law is well settled that if there is any conflict between the oral pronouncement of sentence and the written judgment itself, the terms of the oral pronouncement control. *See Scott v. United States*, 434 F.2d 11, 20 (5th Cir. 1970). Thus, the judgment of the district court is VACATED and the case is REMANDED for the limited purpose of allowing the district court to amend its written judgment to conform to its oral pronouncement at sentencing. *See United States v. Martinez*, 250 F.3d 941, 942 (5th Cir. 2001).

Mendez-Alvarez's motion for leave to file a pro se supplemental brief is DENIED. *See 5TH CIR. R. 28.7; Myers v. Johnson*, 76 F.3d 1330, 1335 (5th Cir. 1996).

MOTION FOR LEAVE TO FILE PRO SE BRIEF DENIED; JUDGMENT VACATED AND CASE REMANDED FOR AMENDMENT OF JUDGMENT.