

October 20, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 04-10132  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALFREDO COVARRUBIAS, also known as Alfredo  
Covarrubias-Amaral, also known as Robert Covarrubias,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:03-CR-229-ALL-A  
-----

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:\*

Alfredo Covarrubias appeals his sentence for violating  
8 U.S.C. § 1326(a) and (b) by illegally reentering the United  
States, without permission, following his deportation.  
Covarrubias contends for the first time on appeal that he should  
not have been assessed a criminal history point for a prior  
conviction for shoplifting because that crime is similar to the  
crime of writing an insufficient-funds check, which is exempt  
from inclusion in the criminal history calculation. See U.S.S.G.

---

\* 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this opinion should not be published and is not precedent except  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.

§ 4A1.2(c)(1). Covarrubias fails to provide any binding authority holding that the two offenses are similar, and he thus fails to show that the district court made any "clear" or "obvious" error. See United States v. Hull, 160 F.3d 265, 271-272 (5th Cir. 1998).

Covarrubias also has filed a letter pursuant to FED. R. APP. P. 28(j) calling our attention to the Supreme Court's recent decision in Blakely v. Washington, 124 S. Ct. 2531 (2004). However, we have held that Blakely does not apply to the United States Sentencing Guidelines. United States v. Pineiro, 377 F.3d 464, 473 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263).

AFFIRMED.