

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

September 4, 2007

Charles R. Fulbruge III  
Clerk

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No. 04-41366  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ARTURO PALENCIA-CONTRERAS, also known as Joaquin  
Gonzalez-Hernandez

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:04-CR-322-ALL

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ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:\*

Arturo Palencia-Contreras (Palencia) appeals the sentence he received following his guilty-plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326. Palencia argues that the district court misapplied the Sentencing Guidelines by characterizing his previous Texas felony conviction for possession

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

of a controlled substance as an aggravated felony under U.S.S.G. § 2L1.2(b)(1)(C). In a prior opinion, this court affirmed the sentence imposed. See *United States v. Palencia-Contreras*, 141 Fed. App'x 342, 343 (5th Cir. 2005). The Supreme Court granted certiorari, vacated this court's judgment, and remanded the case for further consideration in light of its intervening decision in *Lopez v. Gonzales*, 127 S. Ct. 625 (2005).

Because Palencia has now completed the confinement portion of his sentence, any argument that the term of incarceration should be reduced is moot, and the only portion of the sentence remaining for consideration is his term of supervised release. See *United States v. Ramon*, 320 F.3d 519, 519-20 (5th Cir. 2003); see also *Johnson v. Pettiford*, 442 F.3d 917, 918 (5th Cir. 2006). Palencia, however, has been removed from the United States. Because he is barred from returning to the United States and because there is no indication that he has waived his right to be present for resentencing, Palencia's challenge to the validity of his sentence is moot. See *United States v. Rosenbaum-Alanis*, 483 F.3d 381, 383 (5th Cir. 2007). Accordingly, the appeal is DISMISSED.