

August 17, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-51453
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JULIO CESAR FLORES,
also known as Julio Cervantes-Martinez,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:04-CR-630-1

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Julio Cesar Flores appeals the 46-month sentence he received following his guilty-plea conviction for illegal reentry after deportation, in violation of 8 U.S.C. § 1326. He argues that the district court committed reversible plain error by increasing the maximum authorized guidelines sentence based on facts neither admitted nor found by a jury and by imposing a sentence under a mandatory guidelines scheme. Flores correctly concedes that he cannot carry his burden of showing that the district court's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

error affected his substantial rights. See United States v. Valenzuela-Quevedo, 407 F.3d 728, 733-34 (5th Cir. 2005), petition for cert. filed (July 25, 2005) (No. 05-5556); United States v. Mares, 402 F.3d 511, 521 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517).

Flores also argues that because his indictment did not allege a prior felony conviction, he was subject to a maximum sentence of only two years under U.S.C. § 1326(a). He correctly acknowledges that his argument is foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 235 (1998). The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.