

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2007

Charles R. Fulbruge III
Clerk

No. 07-40057

Conference Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

PEDRO SALAZAR-GARCIA

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:06-CR-810-1

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:*

Pedro Salazar-Garcia was convicted of illegal reentry into the United States after having been deported and was sentenced to serve 70 months in prison. He contends that our rulings giving a presumption of reasonableness to guidelines sentences effectively reinstate mandatory guidelines sentencing and render his sentence unreasonable as a matter of law. Salazar-Garcia's arguments concerning this court's presumption of reasonableness are foreclosed

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

by both this court's caselaw, see *United States v. Alonzo*, 435 F.3d 551, 554 (5th Cir. 2006), and the Supreme Court's decision in *Rita v. United States*, 127 S. Ct. 2456, 2462-66 (2007).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Salazar-Garcia challenges the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. This court has held that this issue is "fully foreclosed from further debate." *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

The judgment of the district court is AFFIRMED.