

August 17, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50053
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FLOR DEL RIO, also known as Flor Del Rio-De Mendez,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:04-CR-1869-ALL

Before BENAVIDES, CLEMENT, and PRADO, Circuit Judges.

PER CURIAM:*

Flor Del Rio appeals her sentence following her guilty-plea conviction of one charge of illegal reentry into the United States. Del Rio argues that the district court erred in sentencing her under a mandatory sentencing guidelines scheme. She acknowledges that this claim is reviewed for plain error only, but she contends that she can meet this standard.

The district court committed error that is plain by sentencing Del Rio under a mandatory sentencing guidelines

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

regime. See United States v. Mares, 402 F.3d 511, 520-21 (5th Cir. 2005), petition for cert. filed (U.S. Mar. 31, 2005) (No. 04-9517); United States v. Valenzuela-Quevedo, 407 F.3d 728, 732 (5th Cir. 2005), petition for cert. filed (July 25, 2005) (No. 05-5556). Nevertheless, Del Rio has not carried her burden of showing that the district court's error affected her substantial rights. See Valenzuela-Quevedo, 407 F.3d at 733-34; Mares, 402 F.3d at 521. She thus has not shown that she should receive relief on this claim.

Del Rio's argument that the sentencing provisions in 8 U.S.C. § 1326(b) are unconstitutional is, as she concedes, foreclosed by Almendarez-Torres v. United States, 523 U.S. 224, 247 (1998). See Apprendi v. New Jersey, 530 U.S. 466, 489-490 (2000); United States v. Dabeit, 231 F.3d 979, 984 (5th Cir. 2000).

Del Rio has shown no reversible error in the district court's judgment. Consequently, that judgment is AFFIRMED.