

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

December 12, 2007

---

No. 06-20989  
Conference Calendar

---

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JOSE MARMOLEJO-SANCHEZ, also known as Jesus Rodriguez, also known as  
Jesus Rodriguez-Marmolejo, also known as Ismael Rodriguez-Marmolejo

Defendant-Appellant

---

Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:06-CR-309-ALL

---

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:\*

Jose Marmolejo-Sanchez (Marmolejo) appeals his guilty-plea conviction and 24-month sentence for being illegally present in the United States following deportation. He argues that his sentence is unreasonable as a matter of law because this court's use of a presumption of reasonableness for sentences imposed within the properly calculated guidelines range effectively reinstates the mandatory guidelines regime struck down in *United States v. Booker*, 543

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S. 220 (2005). This argument is foreclosed. See *Rita v. United States*, 127 S. Ct. 2456, 2465 (2007).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Marmolejo 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.