

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 12, 2007

No. 07-40225
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ARMANDO ARMENDARIZ-MORENO, also known as Armando Moreno-Ortiz

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:06-CR-1029-ALL

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:*

Armando Armendariz-Moreno (Armendariz) pleaded guilty to illegal reentry after deportation and after having been convicted of an aggravated felony.

On appeal, Armendariz challenges the district court's characterization of his prior Texas conviction of unauthorized use of a motor vehicle as an aggravated felony for sentencing purposes. Armendariz concedes that this issue is foreclosed, but he nevertheless seeks to preserve it for Supreme Court review

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

in light of the Supreme Court's decision in *Leocal v. Ashcroft*, 543 U.S. 1 (2004). As Armendariz concedes, this issue is foreclosed. See *Brieva-Perez v. Gonzales*, 482 F.3d 356, 360-61 (5th Cir. 2007); *United States v. Galvan-Rodriguez*, 169 F.3d 217, 219-20 (5th Cir. 1999).

In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Armendariz also 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-Arellano*, 492 F.3d 624, 625 (5th Cir. 2007), petition for cert. filed (Aug. 28, 2007) (No. 07-6202).

AFFIRMED.