

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 24, 2008

No. 07-40841

Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ALFREDO VILLAFUERTE-RODRIGUEZ, also known as Alfredo Rodriguez-Villafuerte

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:07-CR-290-1

Before SMITH, BARKSDALE, and ELROD, Circuit Judges.

PER CURIAM:*

In the light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Alfredo Villafuerte-Rodriguez 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 contention is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

235 (1998). See *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008).

Villafuerte also seeks our remanding for correction of a clerical error in the judgment, pursuant to Federal Rule of Criminal Procedure 36. The Government joins this request. This matter is remand for the limited purpose of correcting the judgment to reflect that Villafuerte was found guilty after a plea of not guilty. See FED. R. CRIM. P. 36.

AFFIRMED; REMANDED FOR THE LIMITED PURPOSE OF CORRECTING CLERICAL ERROR IN JUDGMENT.