

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 19-10129
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
August 28, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ABRAHAM CONDE-HERRERA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:18-CR-232-1

Before CLEMENT, ELROD, and OLDHAM, Circuit Judges.

PER CURIAM:*

Abraham Conde-Herrera appeals his above-guidelines sentence of 31 months of imprisonment and two years of supervised release on his conviction for illegal reentry in violation of 8 U.S.C. § 1326(a) and (b)(1). He argues that the district court: (1) violated Federal Rule of Criminal Procedure 11 and erroneously accepted his involuntary guilty plea because he was not admonished that his prior felony conviction was an essential element of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 19-10129

offense that must be proved beyond a reasonable doubt and (2) erroneously sentenced him under § 1326(b)(1) because that enhanced sentencing provision is unconstitutional in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and subsequent decisions. Conde-Herrera concedes that his arguments are unpreserved and subject to review for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009).

The Government has filed an unopposed motion for summary affirmance arguing that Conde-Herrera's arguments are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). As Conde-Herrera concedes that his arguments are foreclosed by this decision, summary affirmance is appropriate. *See Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED.