

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

March 30, 2022

Lyle W. Cayce
Clerk

No. 21-51010
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ULTIMO MONTILLA,

Defendant—Appellant,

CONSOLIDATED WITH

No. 21-51024

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

WILLIE MONTILLA-TEJEDA,

Defendant—Appellant.

No. 21-51010
c/w No. 21-51024

Appeals from the United States District Court
for the Western District of Texas
USDC No. 4:21-CR-644-1
USDC No. 4:21-CR-494-1

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:*

Ultimo Montilla, also known as Willie Montilla-Tejeda, appeals his conviction and sentence for illegal reentry after removal under 8 U.S.C. § 1326(a) and (b)(2), along with the revocation of the term of supervised release he was serving at the time of the offense. He has not briefed, and has therefore abandoned, any challenge to the revocation of supervised release or his revocation sentence. *See United States v. Reagan*, 596 F.3d 251, 254-55 (5th Cir. 2010).

For the first time on appeal, Montilla argues that § 1326(b) is unconstitutional because it permits a defendant to be sentenced above the statutory maximum under § 1326(a) based on the fact of a prior conviction that was not alleged in the indictment or found by a jury beyond a reasonable doubt. He has filed an unopposed motion for summary disposition and a letter brief correctly conceding that this issue is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). *See United States v. Pervis*, 937 F.3d 546, 553-54 (5th Cir. 2019). Montilla states that he has raised the issue only to preserve it for possible further review. Because summary disposition is appropriate, *see Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-51010
c/w No. 21-51024

Cir. 1969), Montilla's motion is GRANTED, and the district court's judgments are AFFIRMED.