

No.

IN THE
SUPREME COURT OF THE UNITED STATES

CONRADO PARTIDA-CALLES,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

APPENDIX

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the
Northern District of Texas

APPENDIX A

705 Fed.Appx. 316 (Mem)

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 5th Cir. Rules 28.7 and 47.5.

United States Court of Appeals,
Fifth Circuit.

UNITED STATES of America, Plaintiff-Appellee
v.

Conrado PARTIDA-CALLES, Defendant-Appellant

No. 17-10561

|
Summary Calendar

|
Filed December 5, 2017

Appeal from the United States District Court for the Northern District of Texas, USDC No. 6:16-CR-41-1

Attorneys and Law Firms

James Wesley Hendrix, Assistant U.S. Attorney, U.S. Attorney's Office, Northern District of Texas, Dallas, TX, for Plaintiff-Appellee

Jerry Van Beard, Esq., Assistant Federal Public Defender, Federal Public Defender's Office, Northern District of Texas, Fort Worth, TX, [Carly Elizabeth Barton](#), Federal Public Defender's Office, Northern District of Texas, Lubbock, TX, for Defendant-Appellant

Before [HIGGINBOTHAM](#), [JONES](#), and [SMITH](#), Circuit Judges.

Opinion

PER CURIAM:*

Footnotes

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Conrado Partida-Calles appeals the 24-month above-guidelines sentence and three-year term of supervised release imposed following his guilty plea conviction for illegal reentry after deportation. He argues that his sentence violates due process because it exceeds the statutory maximum sentence of [8 U.S.C. § 1326\(a\)](#). He concedes that the issue whether his eligibility for a sentencing enhancement under [§ 1326\(b\)](#) must be alleged in the indictment and proved to a jury is foreclosed by [Almendarez-Torres v. United States](#), 523 U.S. 224, 118 S.Ct. 1219, 140 L.Ed.2d 350 (1998). He seeks to preserve the issue for possible Supreme Court review because, he argues, subsequent Supreme Court decisions indicate that the Court may reconsider this issue.

In [Almendarez-Torres](#), 523 U.S. at 239-47, 118 S.Ct. 1219, the Supreme Court held that for purposes of a statutory sentencing enhancement, a prior conviction is not a fact that must be alleged in an indictment or found by a jury beyond a reasonable doubt. Subsequent Supreme Court decisions have not overruled [Almendarez-Torres](#). See [United States v. Wallace](#), 759 F.3d 486, 497 (5th Cir. 2014) (considering the effect of [Alleyne v. United States](#), 570 U.S. 99, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013)); [United States v. Pineda-Arrellano](#), 492 F.3d 624, 625-26 (5th Cir. 2007) (considering the effect of [Apprendi v. New Jersey](#), 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000)). Thus, Partida-Calles's argument is foreclosed.

Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.

All Citations

705 Fed.Appx. 316 (Mem)

APPENDIX B

United States District Court

Northern District of Texas
San Angelo DivisionU.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED

MAY - 5 2017

CLERK U.S. DISTRICT COURT

By Deputy

UNITED STATES OF AMERICA

v.

CONRADO PARTIDA-CALLES
Defendant.Case Number: 6:16-CR-00041-C(01)
USM No. 55024-177**JUDGMENT IN A CRIMINAL CASE**
(For Offenses Committed On or After November 1, 1987)

The defendant, CONRADO PARTIDA-CALLES, was represented by Carly Elizabeth Barton.

The defendant pleaded guilty to count 1 of the indictment filed December 13, 2016. Accordingly, the court has adjudicated that the defendant is guilty of the following offenses:

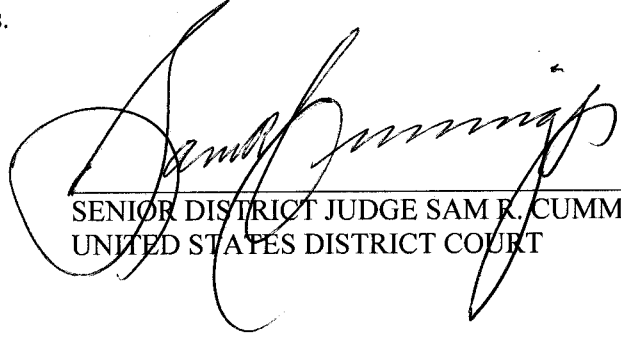
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date of Offense</u>	<u>Count Number</u>
8 U.S.C. § 1326; and 6 U.S.C. §§ 202(3), 202(4) and 557	Illegal Re-Entry After Deportation	11/21/2016	1

As pronounced on May 5, 2017, the defendant is sentenced as provided in pages 1 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00, for count 1 of the indictment, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court.

It is further ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material change in the defendant's economic circumstances.

Signed this the 5th day of May, 2017.


 SENIOR DISTRICT JUDGE SAM R. CUMMINGS
 UNITED STATES DISTRICT COURT

DEFENDANT: CONRADO PARTIDA-CALLES
CASE NUMBER: 6:16-CR-00041-C(01)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 24 months as to count 1 with this sentence to run consecutive to any sentence imposed in Cause No. A-13-0273-SA pending in the 51st District Court of Tom Green County, San Angelo, Texas.

The defendant shall remain in the custody of the U.S. Marshal Service.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: CONRADO PARTIDA-CALLES
CASE NUMBER: 6:16-CR-00041-C(01)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: 3 years.

The defendant shall report to the U.S. Probation Officer in a manner and frequency directed by the Court or Probation Officer in the district to which the defendant is released from the custody of the Federal Bureau of Prisons, or in which the defendant makes entry into the United States, within 72 hours of release or entry.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer.
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.
- ☐ The defendant shall participate in an approved program for domestic violence.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Fine and Restitution sheet of the judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer at least ten days prior to any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: CONRADO PARTIDA-CALLES
CASE NUMBER: 6:16-CR-00041-C(01)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall abstain from the use of alcohol and all other intoxicants during the term of supervision.
2. The defendant shall not illegally re-enter the United States, if deported, removed, or allowed voluntary departure.
3. The defendant shall participate in a program (inpatient and/or outpatient) approved by the U.S. Probation Office for treatment of narcotic, drug, or alcohol dependency, which will include testing for the detection of substance use or abuse. The defendant shall contribute to the costs of services rendered (copayment) at a rate of at least \$25.00 per month.