

April 17, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-40560  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RODOLFO ACOSTA-ORELLANA,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 2:05-CR-651-ALL  
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Before HIGGINBOTHAM, BENAVIDES, and PRADO, Circuit Judges.

PER CURIAM:\*

Rodolfo Acosta-Orellana appeals his sentence following his guilty-plea conviction for illegal reentry after deportation, in violation of 8 U.S.C. § 1326. Acosta-Orellana argues that the district court erroneously characterized his state conviction for simple possession of heroin as an aggravated felony, which increased his offense level by eight pursuant to U.S.S.G. § 2L1.2(b)(1)(C). We review Acosta-Orellana's challenge to the district court's application of the Sentencing Guidelines de

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

novo. See United States v. Villegas, 404 F.3d 355, 359-61 (5th Cir. 2005).

In the light of the Supreme Court's recent decision in Lopez v. Gonzales, 127 S. Ct. 625 (2006), Acosta-Orellana's argument has merit. See United States v. Estrada-Mendoza, 475 F.3d 258, 259-61 (5th Cir. 2007). Accordingly, Acosta-Orellana's sentence is vacated, and the case is remanded for resentencing in light of Lopez.

CONVICTION AFFIRMED; SENTENCE VACATED AND REMANDED FOR RESENTENCING.