

February 6, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-50807  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDGAR ALONSO GUTIERREZ-ORTIZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. EP-03-CR-214-ALL-PRM  
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Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Edgar Alonso Gutierrez-Ortiz (Gutierrez) appeals the 41-month sentence imposed following his guilty-plea conviction of attempted illegal re-entry of a deported alien. Gutierrez contends that the district court erred in increasing his offense level under U.S.S.G. § 2L1.2(b)(1)(A). He asserts that his prior conviction for violating 21 U.S.C. § 843(b) is not a "drug trafficking offense."

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

An element of a 21 U.S.C. § 843(b) offense is the defendant's commission of an independent drug crime or facilitation of such a crime. United States v. Mankins, 135 F.3d 946, 949 (5th Cir. 1998). Gutierrez's prior conviction was for use of a telephone to distribute heroin. Accordingly, we affirm the district court's imposition of the 16-level increase in Gutierrez's offense level based on his previously having committed a drug trafficking offense. Id.; see United States v. Orihuela, 320 F.3d 1302 (11th Cir. 2003).

AFFIRMED.