

September 10, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40008
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN RODRIGUEZ-DEL CAMPO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-03-CR-1378-ALL

Before JONES, BARKSDALE and PRADO, Circuit Judges.

PER CURIAM:*

Juan Rodriguez-Del Campo appeals his sentence following his guilty plea conviction for illegal reentry following deportation in violation of 8 U.S.C. § 1326.

Rodriguez contends that the district court erred when it increased his base offense level by 12 levels because there was no evidence that he had previously been convicted of a felony drug trafficking offense for which the sentence imposed was 13 months or less as required by U.S.S.G. § 2L1.2(b)(1)(B).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The record does not support a finding that Rodriguez was previously convicted of a felony drug trafficking offense for which the sentence imposed was 13 months or less. Therefore, the district court erred when it increased Rodriguez's base offense level by 12 levels. Accordingly, the sentence is VACATED, and this case is REMANDED for resentencing in accordance with this opinion.

Rodriguez's unopposed motion to vacate and remand or, alternatively, for an extension of time to file a reply brief is DENIED as moot.

SENTENCE VACATED AND REMANDED FOR RESENTENCING; MOTION DENIED.