

December 9, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-30349
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO SANTILLANA,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 02-CR-238-3-S

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Pedro Santillana appeals his career-offender sentence following a guilty-plea conviction for marijuana-trafficking crimes. He contends that a Texas aggravated-assault conviction used to establish his career-offender status was not a "crime of violence" due to the facts that he was only 17 at the time of the prior felony, the crime involved only a BB gun, no one was harmed, and he received only probation. The underlying facts need not be considered because the guidelines define "crime of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

violence" specifically to include "aggravated assault." See U.S.S.G. § 4B1.2, comment. (n.1); United States v. Guerra, 962 F.2d 484, 485-86 & n.4 (5th Cir. 1992) (relying on application note defining "crime of violence").

Santillana expressly declares that he is not appealing the district court's discretionary refusal to depart downward from career-offender status pursuant to U.S.S.G. § 4A1.3. His remaining argument on appeal is thus reduced to a meritless recharacterization of his unsuccessful first argument. The judgment of the district court is AFFIRMED.