

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

December 11, 2007

No. 06-50870
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

VICENTE GONZALEZ PESINA

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:05-CR-221-1

Before REAVLEY, BARKSDALE, and GARZA, Circuit Judges.

PER CURIAM:*

Vicente Gonzalez Pesina (Gonzalez) appeals his guilty-plea conviction of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). Gonzalez argues that the magistrate judge who conducted his plea hearing failed to advise him of the nature of the charge in violation of FED. R. CRIM. P. 11(b)(1)(G). Although Gonzalez argues that the Government must show this error was harmless, review is for plain error because Gonzalez failed to object to

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 magistrate judge's Rule 11 colloquy. See *United States v. Vonn*, 535 U.S. 55, 59 (2002). Gonzalez was repeatedly informed of the nature of the charge against him, and he repeatedly stated that he understood the charge. The indictment set forth each element of the offense of being a felon in possession of a firearm and was read aloud in open court at Gonzalez's initial appearance and again at his arraignment. After each reading of the indictment, Gonzalez was asked if he understood the charges against him, and he answered affirmatively both times. Likewise, the written factual basis filed by the Government described the elements, namely, Gonzalez's prior felony convictions and possession of a firearm that was manufactured in another state and that had traveled in interstate commerce. Gonzalez affirmed that he understood the factual basis and that it was accurate. Moreover, the magistrate judge determined in his written findings of fact and recommendation that Gonzalez was aware of the nature of the charges against him, and Gonzalez did not object.

Because Gonzalez has not shown a reasonable probability that, but for the magistrate judge's variance from Rule 11(b)(1)(G), he would not have pleaded guilty, see *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004), the judgment of the district court is **AFFIRMED**.