

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 4, 2008

Charles R. Fulbruge III
Clerk

No. 06-40755
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JORGE TOLEDO-ORTIZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:05-CR-1649-3

Before KING, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jorge Toledo-Ortiz (Toledo) appeals the 45-month sentence imposed following his guilty plea conviction for conspiracy to possess with intent to distribute less than 100 kilograms of marijuana. Toledo argues that the district court committed reversible error by denying him a minor role adjustment to his offense level and by not articulating the factual basis for the denial.

The record demonstrates that Toledo played a critical role in packaging the marijuana for distribution. Notwithstanding that Toledo's participation was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

small in terms of the overall distribution scheme, it was not minor in that it was “coextensive with the conduct for which he was held accountable,” *United States v. Garcia*, 242 F.3d 593, 598-99 (5th Cir. 2001), and not merely peripheral to the advancement of the illicit activity, see *United States v. Villanueva*, 408 F.3d 193, 204 (5th Cir. 2005). The district court did not clearly err.

The requirement that the district court articulate a sufficient factual basis for the denial of a minor role adjustment can be satisfied through implicit findings, such as when the district court adopts the presentence report, which occurred in this case. See *United States v. Gallardo-Trapero*, 185 F.3d 307, 323-24 (5th Cir. 1999). Accordingly, the judgment of the district court is AFFIRMED.