

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

September 8, 2008

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No. 07-41149  
\_\_\_\_\_

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GUILLERMO AYALA,

Defendant-Appellant.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
\_\_\_\_\_

Before JOLLY, GARZA, and ELROD, Circuit Judges.

PER CURIAM:

Appellant Guillermo Ayala was convicted below of illegal reentry into the United States in violation of 8 U.S.C. § 1326(a)-(b). Prior to being deported, Ayala was convicted of indecency with a child in violation of Texas Penal Code § 21.11(a)(1). Equating “indecency with a child” under Texas law with “sexual abuse of a minor” for purposes of § 2L1.2 of the Federal Sentencing Guidelines, the district court enhanced Ayala’s offense level by sixteen and imposed a sentence of seventy-eight months’ imprisonment.

Ayala contends that § 21.11(a)(1) proscribes conduct beyond that falling within the ordinary and contemporary meaning of “sexual abuse of a minor,” and therefore that his prior conviction under that statute is not a legitimate basis for a crime-of-violence enhancement under the Guidelines. Specifically, he argues that the definition of “child” under § 21.11(a)—a person less than seventeen

years of age—is inconsistent with the contemporary and ordinary meaning of “minor” because, for purposes of many states’ statutory rape laws, a person’s “age of consent” is deemed to be sixteen. See generally *United States v. Lopez-Deleon*, 513 F.3d 472 (5th Cir. 2008) (discussing when children reach the age of consent under various states’ statutory rape laws).

As Ayala recognizes, we have already addressed the issue of whether a violation of § 21.11(a) constitutes sexual abuse of a minor for purposes of § 2L1.2; in answering in the affirmative, we have stated that “a child younger than 17 years[]’ is clearly a ‘minor.’” *United States v. Zavala-Sustaita*, 214 F.3d 601, 604 (5th Cir. 2000) (quoting § 21.11(a)); see also *United States v. Najera-Najera*, 519 F.3d 509, 511 (5th Cir. 2008) (relying on *Zavala-Sustaita* in stating “under generic-meaning analysis, a person younger than 17 years old is a ‘child’”). Because our precedent forecloses Ayala’s argument, the judgment of the district court is AFFIRMED.