

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-41008  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID MATA-DELGADO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. B-00-CR-202-1  
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August 6, 2001

Before JOLLY, DAVIS, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

David Mata-Delgado (Mata) appeals the sentence imposed by the district court following his guilty-plea conviction to possession of marijuana with intent to distribute. He asserts that the district court misapplied U.S.S.G. § 3B1.2 and refused to give him a downward adjustment for his role in the offense by requiring that another individual had to be prosecuted for the guideline to apply. This court reviews the sentencing judge's application of the guidelines *de novo*. United States v. Patterson, 962 F.2d 409, 416 (5th Cir. 1992). The record does

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not reveal that the district court failed to impose the guideline based upon a mistaken belief that another individual had to be charged, prosecuted, or convicted. Mata has failed to show that the district court misapplied the Sentencing Guidelines.

Mata also contends that the district court clearly erred in its factual finding that no other individual was involved in the offense, in light of a statement in the presentence report stating that Mata was recruited by another individual to transport the marijuana across the border. A district court's factual finding regarding a defendant's role in the offense is reviewed for clear error. United States v. Gallegos, 868 F.2d 711, 713 (5th Cir. 1989). Based upon the statements made at sentencing, it is unclear whether the district court found that no other individual was involved in an uncharged conspiracy and that Mata acted entirely alone or whether it concluded that there was no showing that another individual participated in the possession-with-intent-to-distribute charge, the only charge taken into consideration at sentencing. See United States v. Atanda, 60 F.3d 196, 199 (5th Cir. 1995). Because it is not clear whether the district court committed clear error in its factual finding, Mata's sentence is VACATED and the case REMANDED for further consideration.

VACATED AND REMANDED.