

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-50094
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OLIVER HANS DIETER SCHULTZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. P-00-CR-107-ALL-F

April 5, 2002

Before DAVIS, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Oliver Hans Dieter Schultz has appealed his conviction and the sentence he received for having been found in the United States after deportation, in violation of 8 U.S.C. § 1326. We AFFIRM.

There is no merit to Schultz's contention that the evidence was insufficient to support his conviction, based principally upon his argument that he relied in good faith upon valid visas

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

which he received. See United States v. Trevino-Martinez, 86 F.3d 65, 68 (5th Cir. 1996).

Schultz now contends, for the first time, that the district court should have departed downward in sentencing him, on the ground of cultural assimilation. See United States v. Rodriguez-Montelongo, 263 F.3d 429, 432-34 (5th Cir. 2001). Schultz "is not entitled to appellate relief on this point, because questions of fact capable of resolution at sentencing can never constitute plain error." United States v. Fierro, 38 F.3d 761, 774 (5th Cir. 1994).

AFFIRMED.