

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-20089

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS GONZALES-DIAZ,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(H-01-CR-625-1)

February 13, 2003

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jesus Gonzales-Diaz pleaded guilty to illegal reentry into the United States after being deported. Gonzales-Diaz was sentenced using a base offense level that had been increased by 16 levels pursuant to U.S.S.G. § 2L1.2(b)(1)(A) because his deportation occurred after conviction for bodily injury to a child, under TEX. PENAL CODE ANN. § 22.04(a)(3). Gonzales-Diaz objected to this

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

enhancement arguing that a felony offense of bodily injury to a child is not crime of violence or an aggravated felony. In *United States v. Gracia-Cantu*, this court held, under plain error review, that bodily injury of a child is neither a crime of violence nor an aggravated felony as defined by the guidelines.¹ Accordingly, we VACATE Gonzales-Diaz's sentence and REMAND for resentencing.

VACATE and REMAND FOR RESENTENCING.

¹ 302 F.3d 308, 312-13 (5th Cir. 2002).