

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-41092
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE AYALA-BERMUDES, also known as Jose Alexander Ayala,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-02-CR-179-1

February 11, 2003

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Jose Ayala-Bermudes, a/k/a Jose Alexander Ayala, was convicted for being present unlawfully in the United States following deportation, in violation of 8 U.S.C. § 1326(a) and has appealed his sentence. Ayala contends that the district court plainly erred in concluding that his state misdemeanor conviction for Harassment, under TEX. PENAL CODE ANN. § 42.07(a)(2) (West 1996), was a "crime of violence" for purposes of U.S.S.G. § 2L1.2(b)(1)(E) (2001). Because this issue was not decided at

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the time Ayala was sentenced, any error on the part of the district court was not clear or obvious and, accordingly, was not plain error. See United States v. Hull, 160 F.3d 265, 272 (5th Cir. 1998).

AFFIRMED.