

United States Court of Appeals

Fifth Circuit

F I L E D

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

April 8, 2004

Charles R. Fulbruge III
Clerk

No. 03-51176
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN GARCIA-MARQUEZ, also known as Juan Carlos Noris,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-03-CR-1154-ALL-PM

Before JONES, BENAVIDES, and CLEMENT, Circuit Judges.

PER CURIAM:*

Juan Garcia-Marquez appeals the 30-month sentence imposed following his conviction on a guilty plea to a charge of attempting to enter, entering, and being found illegally in the United States in violation of 8 U.S.C. § 1326.

Garcia-Marquez asserts that the district court erred when it imposed an eight-level increase to his base offense level pursuant to U.S.S.G. §2L1.2(b)(1)(C). He contends that his prior conviction for a non-residential burglary is not an aggravated

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

felony because the offense did not "contemplate violence or actual use of physical force against a victim." He asserts that only a four-level increase under U.S.S.G. §2L1.2(b)(1)(D) was warranted.

We review the district court's application of the Sentencing Guidelines de novo. United States v. Rodriguez-Rodriguez, 323 F.3d 317, 318 (5th Cir. 2003). The 2002 version of U.S.S.G. § 2L1.2, under which Garcia-Marquez was sentenced, provides for an eight-level increase to the base offense level if the defendant previously was deported after a conviction for an aggravated felony. U.S.S.G. § 2L1.2(b)(1)(C).

An aggravated felony is defined by 8 U.S.C. § 1101(a)(43). U.S.S.G. § 2L1.2, comment. (n.2). Section 1101(a)(43)(G), 8 U.S.C., provides that an aggravated felony includes "a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year." Garcia-Marquez was convicted in Kansas in 1995 for non-residential burglary and was sentenced to sixteen months of imprisonment.

The district court did not commit error by increasing Garcia-Marquez's base offense level by eight levels for a prior aggravated felony. Accordingly, the judgment of the district court is AFFIRMED.