

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 17, 2007

No. 05-20889

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ROBERT WARREN CHAPMAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(USDC No. 4:03-CR-357-ALL)

Before JONES, Chief Judge, and REAVLEY and SMITH, Circuit Judges.

PER CURIAM:*

Robert Warren Chapman appeals his sentence following his conviction of one count of possession of child pornography in violation of 18 U.S.C. § 2252A. To avoid ex post facto issues, the district court calculated Chapman's guideline range using the 2002 U.S. Sentencing Guidelines Manual and the April 30, 2003 Supplement. The district court enhanced Chapman's offense level by two levels under U.S.S.G. § 2G2.4(b)(2) because Chapman possessed ten or more computer files containing a visual depiction involving sexual exploitation of a minor and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

by two levels under § 2G2.4(b)(5)(A) because the offense involved at least 10, but fewer than 150 images. Under *United States v. Gonzalez*, 445 F.3d 815, 818 (5th Cir. 2006), this double-counting was error, and the Government concedes that the error requires re-sentencing. We vacate the sentence but add that the court's assessment of a life term of supervised release was consistent with the guidelines and reasonable under the circumstances.

SENTENCE VACATED; REMANDED FOR RE-SENTENCING.