

May 7, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 05-41116

UNITED STATES OF AMERICA,

Plaintiff - Appellee

versus

JESUS REYES-OLVERA,

Defendant - Appellant.

Appeal from the United States District Court
for the Southern District of Texas, Laredo
USDC No. 5:05-CR-288-ALL

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

This court previously affirmed the conviction and sentence of the Appellant, Jesus Reyes-Olvera ("Reyes"). United States v. Reyes-Olvera, 203 Fed. Appx. 599 (5th Cir. 2006). The Supreme Court vacated and remanded the case for reconsideration in the light of Lopez v. Gonzalez, 127 S.Ct. 625 (2006). Ochoa-Perez v. United States, 127 S.Ct. 1263 (2007). Following the Supreme

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Court's remand, we requested and received supplemental letter briefs from both parties with respect to the impact of Lopez.

The Government concedes, and we agree that, in the light of Lopez, the district court erred by enhancing Reyes's sentence on the basis of his Texas conviction for possession of cocaine. Reyes remains in custody in federal prison, with a projected release date of September 4, 2007. Accordingly, the appeal is not moot. See United States v. Rosenbaum-Alanis, No. 05-41400, 2007 WL 926832 (5th Cir. March 29, 2007).

For the foregoing reasons, we AFFIRM Reyes's conviction, VACATE his sentence, and REMAND for resentencing in accordance with Lopez.