

May 29, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-41162  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GILBERT ANDREW RUBIO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:05-CR-218  
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Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:\*

Having pleaded guilty, Gilbert Andrew Rubio challenges his 120-month sentence for being a felon in possession of a firearm. Rubio argues that his sentence must be vacated because the evidence does not support the district court's finding that Rubio possessed the firearm at issue during the commission of an aggravated robbery. Rubio also argues that the district court erred in concluding that a prior California conviction was a crime of violence under U.S.S.G. § 4B1.1; however, he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

acknowledges that this issue will be irrelevant to his sentence and need not be resolved if the record supports the aggravated robbery finding.

Our review of the record shows that the evidence supports the district court's determination that Rubio used the weapon involved in his offense to commit an aggravated robbery. United States v. Harper, 448 F.3d 732, 735 n.2 (5th Cir. 2006); United States v. Carreon, 11 F.3d 1225, 1240 (5th Cir. 1994). We find no error in the district court's computation of Rubio's advisory Sentencing Guidelines. United States v. Villanueva, 408 F.3d 193, 202-03 & n.9 (5th Cir.), cert. denied, 126 S. Ct. 268 (2005). As these findings show that there is no error in Rubio's sentence, we find it unnecessary to address the issue whether his prior offense was a crime of violence.

AFFIRMED.