

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2008

No. 07-41183
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JULIO CESAR GODOY-JIMENEZ

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:07-CR-626-ALL

Before KING, BARKSDALE, and OWEN, Circuit Judges.

PER CURIAM:*

Julio Cesar Godoy-Jimenez appeals the 34-month sentence imposed by the district court following his guilty plea conviction for illegal reentry, in violation of 8 U.S.C. § 1326. Godoy-Jimenez contends that the district court erred in applying an eight-level enhancement pursuant to U.S.S.G. § 2L1.2(b)(1)(C) based on his two prior state convictions for possession of a controlled substance. Citing *Lopez v. Gonzales*, 549 U.S. 47 (2006), Godoy-Jimenez argues that the eight-level

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

enhancement was not warranted because he was not convicted as a recidivist for the second state conviction for possession of a controlled substance and therefore that the offense did not qualify as an aggravated felony under the Sentencing Guidelines.

Lopez has not altered our holding in *United States v. Sanchez-Villalobos*, 412 F.3d 572 (5th Cir.2005), that a second state conviction for simple possession qualifies as an aggravated felony sufficient to support the imposition of the eight-level enhancement under § 2L1.2(b)(1)(C). *United States v. Cepeda-Rios*, 530 F.3d 333, 335-36 (5th Cir. 2008). Thus, regardless of how Godoy-Jimenez's state possession offense would be characterized under state law, his second state conviction for possession is punishable as an aggravated felony for sentencing purposes. See *id*; *Sanchez-Villalobos*, 412 F.3d at 577.

The judgment of the district court is AFFIRMED.