

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

April 18, 2008

No. 07-50319
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

DEON JAMES SHAMBURGER, also known as Devon Lamont Wilson

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:06-CR-206-ALL

Before KING, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Deon James Shamburger appeals the sentence imposed following his guilty plea conviction for assault of a federal officer. Shamburger argues that the district court erred by applying the enhancement pursuant to U.S.S.G. § 2A2.4 based on a finding that the victim suffered bodily injury. Shamburger contends that the evidence does not show that the injury was significant.

Section 2A2.4(b)(2) of the Sentencing Guidelines provides for a two-level increase when an offense involves bodily injury to the victim. Bodily injury is

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

defined by reference to U.S.S.G. § 1B1.1 and is “any significant injury; e.g. an injury that is painful or obvious, or is of a type for which medical attention ordinarily would be sought.” § 2A2.4(b)(2), comment. (n.1), citing § 1B1.1, comment. (n.1(B)). Because the recent Supreme Court decisions of *Gall v. United States*, 128 S. Ct. 586 (2007), *Rita v. United States*, 127 S. Ct. 2456 (2007), and *Kimbrough v. United States*, 128 S. Ct. 558 (2007), did not alter this court’s review of the district court’s construction of the Guidelines or findings of fact, see *United States v. Cisneros-Guiterrez*, ___ F.3d ___, 2008 WL 383024 at *8 (5th Cir. Feb. 13, 2008), the district court’s interpretation and application of the sentencing guidelines are reviewed de novo, and its factual findings are reviewed for clear error. *United States v. Juarez Duarte*, 513 F.3d 204, 208 (5th Cir. 2008) (per curiam) (post-*Gall* and *Kimrough*).

The district court viewed a photograph showing a bleeding laceration sustained by the victim. The victim testified that the injury was painful. Therefore, there was sufficient evidence for the district court to find that the victim suffered a painful or obvious injury. The district court did not clearly err in applying the enhancement under § 2A2.4. Accordingly, the judgment of the district court is AFFIRMED.