

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

October 21, 2008

---

No. 08-50010  
Conference Calendar

---

Charles R. Fulbruge III  
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JUAN JOSE MENDOZA-GALLARDO, also known as Juan Jose Mendoza-Castillo

Defendant-Appellant

---

Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:07-CR-1342-ALL

---

Before KING, BARKSDALE, and OWEN, Circuit Judges.

PER CURIAM:\*

Juan Jose Mendoza-Gallardo (Mendoza) pleaded guilty to illegal reentry after deportation and was sentenced to 24 months of imprisonment and three years of supervised release.

Mendoza argues on appeal that the district court erred in increasing his guidelines offense level by eight levels under U.S.S.G. § 2L1.2(b)(1)(C) based on its characterization of the more recent of his two prior state drug possession

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

convictions as an aggravated felony. Citing *Lopez v. Gonzales*, 549 U.S. 47 (2006), he contends that the more recent state drug possession conviction could not constitute an aggravated felony because the State did not plead and prove that he was a recidivist when it obtained the conviction, as is required under 21 U.S.C. §§ 844(a) and 851.

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 (5th Cir. 2008). The State's failure to comply with the procedural requirements of §§ 844(a) and 851(a) in obtaining the second drug possession conviction does not prohibit the district court from enhancing a sentence on this basis. *Id.* at 336 n.11.

AFFIRMED.