

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 8, 2008

No. 08-50375
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

RODRIGO DEL REAL-HURTADO, also known as Luis Sanchez-Hernandez

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:07-CR-2552-1

Before JOLLY, BARKSDALE, and HAYNES, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Rodrigo Del Real-Hurtado presents arguments that he concedes are foreclosed by *United States v. Cepeda-Rios*, 530 F.3d 333, 335-36 (5th Cir. 2008), which held that the Supreme Court's decision in *Lopez v. Gonzales*, 549 U.S. 47 (2006) did not overrule our precedent holding that a second state conviction for simple possession of a controlled substance qualifies as an aggravated felony that supports the imposition of an eight-level enhancement under U.S.S.G. § 2L1.2(b)(1)(C). The Government's

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.