

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 22, 2010

Lyle W. Cayce
Clerk

No. 09-40958

Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS CRUZ-VELEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:09-CR-221-1

Before JOLLY, STEWART, and OWEN, Circuit Judges.

PER CURIAM:*

Jose Luis Cruz-Velez appeals his jury conviction for possession with intent to distribute 154.24 kilograms of marijuana in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(B). He argues that, in light of the Supreme Court decision in *Flores-Figueroa v. United States*, 129 S. Ct. 1886 (2009), the evidence was insufficient to support his conviction because the Government failed to prove beyond a reasonable doubt that he knew the specific type and quantity of controlled substance he possessed.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

This issue is foreclosed by circuit precedent. *See United States v. Gamez-Gonzalez*, 319 F.3d 695, 699-700 (5th Cir. 2003) (holding that knowledge of drug type or quantity is not an element of an offense under § 841). Moreover, this precedent has not been overruled by *Flores-Figueroa*. *See United States v. Betancourt*, 586 F.3d 303, 308-09 (5th Cir. 2009), *cert. denied*, 130 S. Ct. 1920 (2010). Accordingly, the judgment of the district court is AFFIRMED.