

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

United States Court of Appeals  
Fifth Circuit

**FILED**

April 22, 2011

Lyle W. Cayce  
Clerk

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No. 10-20448  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HEDILBERTO MONDRAGON GUZMAN, also known as Hedilberto Guzman,  
also known as Hedilberto Mondragon-Guzman, also known as Hedilberto T.  
Guzman, also known as Albert Guzman,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:10-CR-81-1

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Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:\*

Hedilberto Mondragon Guzman (Guzman) pleaded guilty to one count of unlawful reentry following deportation subsequent to an aggravated felony conviction and was sentenced to 46 months in prison. He now appeals his sentence, arguing that the district court erred by enhancing his offense level by 16 levels pursuant to U.S.S.G. § 2L1.2 based on a prior Texas conviction for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 10-20448

attempted burglary of a habitation. We review this question de novo. *See United States v. Bonilla*, 524 F.3d 647, 651 (5th Cir. 2008).

The judgment from Guzman's prior state conviction shows that on August 30, 2007, he pleaded guilty to and was convicted of attempted burglary of a habitation with intent to commit theft. He also admitted at arraignment that the Government's proffered factual basis—which provided that he was convicted on August 30, 2007, of attempted burglary of a habitation with intent to commit theft—was true. That language falls squarely within § 30.02(a)(1) of the Texas Penal Code, which we have held meets the definition of burglary of a dwelling, an enumerated crime of violence under § 2L1.2. *See United States v. Constante*, 544 F.3d 584, 585 (5th Cir. 2008) (Armed Career Criminal Act case); *United States v. Garcia-Mendez*, 420 F.3d 454, 456-57 (5th Cir. 2005). An attempt to commit an enhancing offense is counted. § 2L1.2, comment. (n.5).

AFFIRMED.