

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

No. 13-40275
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 30, 2013

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS TOBIAS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:12-CR-1685-3

Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Jose Luis Tobias appeals the five 30-month concurrent terms of imprisonment imposed following his conviction for conspiracy to harbor aliens within the United States, harboring aliens within the United States, and conspiracy to transport aliens within the United States by means of a motor vehicle. *See* 8 U.S.C. § 1324(a)(1)(A) and (a)(1)(B). We affirm.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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We reject Tobias's claim that the district court misinterpreted the Sentencing Guidelines and caused it to fail to assign him a three-level reduction in his offense level for not transporting or harboring the aliens for profit. *See* U.S.S.G. § 2L1.1(b)(1)(A). That Guideline does not permit a reduction unless the offense was committed other than for profit. Although the jury made no profit-motive findings with regard to the conspiracy offenses, the presentence report demonstrates that they were committed for profit. A district court may rely on any factual information in the presentence report that has a minimum indicium of reliability. *United States v. Shipley*, 963 F.2d 56, 59 (5th Cir. 1992). As the offense was not committed other than for financial gain, the district court did not err and Tobias is not entitled to a reduction under § 2L1.1(b)(1)(A). *See United States v. Caldwell*, 448 F.3d 287, 290 (5th Cir. 2006); *United States v. Cuellar-Flores*, 891 F.2d 92, 93 (5th Cir. 1989).

AFFIRMED.