

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

No. 13-40814
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 3, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

HECTOR RAFAEL DELEON-AJIATAZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:13-CR-199-1

Before WIENER, OWEN, and HAYNES, Circuit Judges.

PER CURIAM:*

Hector Rafael Deleon-Ajiataz pleaded guilty to being found knowingly and unlawfully present in the United States following deportation and received a below-guidelines prison sentence of 36 months. Deleon-Ajiataz argues on appeal that he was improperly convicted and sentenced under 8 U.S.C. § 1326(b)(2)'s enhanced statutory maximum sentence, asserting that he does not have a prior conviction for an aggravated felony as the statute requires.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 13-40814

Our review is for plain error. *United States v. Mondragon-Santiago*, 564 F.3d 357, 368 (5th Cir. 2009).

The statutes of conviction and adjudicative records that we may consider, *see Shepard v. United States*, 544 U.S. 13, 17-26 (2005); *Taylor v. United States*, 495 U.S. 575, 602 (1990), do not support a determination that Deleon-Ajiataz had a prior aggravated felony conviction as defined in 8 U.S.C. § 1101(a)(43). Regardless of any plain error, however, Deleon-Ajiataz is not entitled to remand for resentencing because, as he concedes, he cannot show that any error affected his sentence. *See Mondragon-Santiago*, 564 F.3d at 369. Nonetheless, because Deleon-Ajiataz's illegal reentry offense was a § 1326(b)(1) violation rather than a § 1326(b)(2) violation, we REMAND for the sole purpose of reforming the judgment to reflect the proper statute of conviction. *See* 28 U.S.C. § 2106. In all other respects, the judgment is AFFIRMED.