

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

No. 15-51084
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 9, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

AARON HERNANDEZ,

Defendant–Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:15-CR-157-1

Before REAVLEY, OWEN, and ELROD, Circuit Judges.

PER CURIAM:*

Aaron Hernandez pleaded guilty to being a felon in possession of a firearm and was sentenced to 70 months of imprisonment. On appeal, he argues that the district court erred by assessing a base offense level of 24 pursuant to United States Sentencing Guidelines § 2K2.1(a)(2) based in part on his prior Texas conviction for possession of cocaine. Because Hernandez objects to the application of U.S.S.G. § 2K2.1 on a different ground than was

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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raised in the district court, we review the issue for plain error only. *See Puckett v. United States*, 556 U.S. 129, 135 (2009); *United States v. Garcia-Mendez*, 420 F.3d 454, 455-56 (5th Cir. 2005).

Hernandez's challenge to his sentence is unavailing. Under U.S.S.G. § 2K2.1(a)(2), the base offense level is 24 if the defendant has two prior felony convictions for controlled substance offenses or crimes of violence. Hernandez's prior Texas convictions for burglary of a habitation and assault by strangulation are both crimes of violence under the Guidelines for purposes of U.S.S.G. § 2K2.1. *See United States v. Uribe*, 838 F.3d 667, 670-71 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 1359 (2017); *United States v. Howell*, 838 F.3d 489, 492 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 1108 (2017). Thus, Hernandez cannot show that the purported error affected his substantial rights. *See Puckett*, 556 U.S. at 135.

* * *

For the foregoing reasons, the judgment of the district court is AFFIRMED.