

United States Court of Appeals
for the Fifth Circuit

No. 23-11060
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

November 7, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ELVIN OMAR VASQUEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:23-CR-32-1

Before JOLLY, JONES, and WILLETT, *Circuit Judges.*

PER CURIAM:*

Elvin Omar Vasquez appeals the sentence imposed following his guilty plea conviction for illegal reentry after removal. He contends that the district court erred by sentencing him pursuant to 8 U.S.C. § 1326(b)(2) because he did not have a prior conviction for an aggravated felony. We

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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review for plain error only. *See Puckett v. United States*, 556 U.S. 129, 135 (2009).

Contrary to Vasquez's assertion, his Texas conviction for possession with intent to deliver a controlled substance constitutes an aggravated felony for purposes of § 1326(b)(2). *See* TEX. HEALTH & SAFETY CODE § 481.112(a); *Ochoa-Salgado v. Garland*, 5 F.4th 615, 616-22 (5th Cir. 2021); *see also* 8 U.S.C. § 1101(a)(43)(B); 18 U.S.C. § 924(c)(2). Accordingly, he has not demonstrated that the district court erred, plainly or otherwise, by sentencing him pursuant to § 1326(b)(2). *See Puckett*, 556 U.S. at 135.

AFFIRMED.