

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7448
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROGELIO REYES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-C-92-00076-01
- - - - -
(January 22, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

A person convicted of an offense shall not be subject to increased punishment as a result of a prior conviction unless, prior to his conviction, the United States attorney files an information with the court and serves a copy of such information on the person or his counsel stating in writing the previous convictions to be relied upon. 21 U.S.C. § 851(a)(1).

Compliance with this provision is mandatory. United States v. Noland, 495 F.2d 529, 533, (5th Cir.), cert. denied, 419 U.S. 966

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

(1974). The Information of Prior Conviction was filed on March 3, 1992, and was served personally on Reyes on that date. Reyes pleaded guilty on April 6, 1992. The Information was timely filed and served on Reyes.

The Information stated that the defendant was being held accountable under the enhancement provisions of 21 U.S.C. § 841(b)(1)(b) as a result of his past conviction for possession of marijuana. Prior to pleading guilty, Reyes acknowledged that he understood the significance of the Information. His counsel stated that he was aware of the Government's intent to seek an enhanced sentence prior to the date of the re-arraignment. Reyes received notice of the enhancement proceeding in accord with the requirements of § 851(a)(1).

"If the United States attorney files an information . . . the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information" 21 U.S.C. § 851(b). The imposition of an enhanced sentence is valid where the district court has substantially complied with the requirements of § 851(b) and the defendant has failed to comply with the statutory prerequisites for challenging a prior conviction. United States v. Garcia, 954 F.2d 273, 277-278 (5th Cir. 1992).

Substantial compliance with § 851(b) has been found where the district court questioned the defendant at the re-arraignment and obtained an admission as to the existence of his prior

conviction. Id. at 277. The district court did not specifically ask Reyes if he had been previously convicted of the drug charge. However, the district court inquired as to whether the information contained in the Presentence Report (PSR) was correct, and Reyes acknowledged that it was. The PSR reflected the defendant's prior drug conviction.

"Section 851(c)(1) directs a defendant who claims the invalidity of any alleged prior conviction to file a written response to the information" Garcia, 954 F.2d at 277. Reyes did not file a written response to the information and neither he nor his counsel questioned the existence or validity of his prior conviction at any point during the arraignment or sentencing proceedings.

In light of Reyes' admission as to the validity of the information contained in the PSR and his failure to file a § 851(c) response to the Information, the district court's failure to comply strictly with the provisions of § 851(b) was harmless. See Garcia, 954 F.2d at 278.

AFFIRMED.