

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8394  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SANTIAGO PASCUAL JIMENEZ-RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P92-CR-034  
- - - - -

June 23, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:\*

Jimenez-Rodriguez contends, for the first time on appeal, that the district court erred in failing to grant him a 3-level reduction for acceptance of responsibility.

Alleged errors raised for the first time on appeal are not reviewable by this Court absent plain error. United States v. Brunson, 915 F.2d 942, 944 (5th Cir. 1990). "`Plain error' is error which, when examined in the context of the entire case, is so obvious and substantial that failure to notice and correct it

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

would affect the fairness, integrity or public reputation of judicial proceedings." United States v. Lopez, 923 F.2d 47, 50 (5th Cir.), cert. denied, 111 S.Ct. 2032 (1991). "It is a mistake so fundamental that it constitutes a `miscarriage of justice.'" Id.

No error, plain or otherwise, has been shown in the instant case. At the July 7, 1992, sentencing hearing, the district court adopted the PSR's recommendation that Jimenez-Rodriguez receive a 2-level reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1. That section was amended effective November 1, 1992, to provide for a 3-level adjustment for acceptance of responsibility under certain circumstances. § 3E1.1(b) (Nov. 1992). Generally, the Sentencing Guidelines in effect at the time of sentencing apply, unless those in effect on the date of the offense are much more favorable to the defendant. 18 U.S.C. § 3553(a)(4); see United States v. Wimbish, 980 F.2d 312, 314 (5th Cir. 1992), cert. denied, \_\_\_ U.S. \_\_\_, No. 92-7993, 1993 WL 80836 (U.S. May 17, 1993). There is no ex post facto problem in this case, nor is there a provision for the retroactive application of § 3E1.1, as amended. See § 1B1.10(d) (Nov. 1992) (referring to amendments listed in Appendix C that are retroactively applied). Thus, the guideline effective at the time of Jimenez-Rodriguez's sentencing, which allowed a 2-level reduction, was correctly applied by the district court.

AFFIRMED