

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8536
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE PADILLA, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-92-CR-59 (1)

- - - - -
August 18, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Jose Padilla, Jr., stipulated that the only issue at trial was whether the cocaine transaction occurred within 1000 feet of Ector Junior High School. On appeal, he argues that the Government failed to prove the allegation in the indictment that Ector Junior School is a public middle school. Based on Padilla's stipulation and the testimony at trial, a reasonable jury could have concluded that Ector Junior High School is a school covered by 21 U.S.C. § 860(a). See United States v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Brookins, 919 F.2d 281, 283-84 (5th Cir. 1990).

The determination that Padilla was not entitled to a two-level reduction in his offense level was within the discretion of the district court. United States v. Kinder, 946 F.2d 362, 367 (5th Cir. 1991), cert. denied, 112 S.Ct. 2290 (1992).

AFFIRMED.