

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 93-1870  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

THOMAS ROBLEDO-GRIMALDO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
(3:93-CR-144-P)

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(May 16, 1994)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Thomas Robledo-Grimaldo challenges his sentence on grounds that the district court erred by refusing to allow him to attack collaterally a prior state conviction which was used in determining his criminal history category. We affirm.

I.

On February 24, 1993, Robledo was deported to Mexico. Robledo had illegally entered the United States in 1972. During his time

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in this country, Robledo was twice convicted in Texas district court, once for felony burglary of a vehicle and once for felony burglary of a habitation. Approximately one month after being deported, Robledo illegally re-entered the United States. He was arrested by immigration agents four days later.

Pursuant to a plea agreement, Robledo pled guilty to illegally re-entering the United States. The presentence report (PSR) determined Robledo's offense level to be 21 and his criminal history category to be VI. These calculations were influenced by Robledo's prior state court felony conviction for burglary of a habitation.

In a sentencing memorandum, Robledo argued that his state court conviction for burglary of a habitation was invalid because he had pled guilty to that offense, despite his innocence, under pressure from his attorney. At the first sentencing hearing, Robledo requested the district court to exercise its discretion and allow him to attack collaterally the prior state court conviction. The district court recessed the hearing to allow the parties to brief the issue.

At the second sentencing hearing, the district court declined to entertain Robledo's collateral attack of his burglary conviction. The court noted that Robledo had the alternative remedy of challenging the conviction in state court and that "I don't think . . . it is proper to attack it in the context of a sentencing hearing." The court then sentenced Robledo to 60 months of imprisonment and two years of supervised release.

## II.

Robledo argues that the district court erred by refusing to allow him to challenge the prior state court conviction. The instructions for computing a defendant's criminal history are found in U.S.S.G. § 4A1.2. The commentary to § 4A1.2 provides in part that:

Sentences resulting from convictions that have been reversed or vacated because of errors of law, or because of subsequently-discovered evidence exonerating the defendant, are not to be counted. Also, sentences resulting from convictions that a defendant shows to have been previously ruled constitutionally invalid are not to be counted.

§ 4A1.2. comment. (n.6). The background note to § 4A1.2 provides that "[t]he Commission leaves for court determination the issue of whether a defendant may collaterally attack at sentencing a prior conviction."

In **U.S. v. Canales**, 960 F.2d 1311, 1315 (5th Cir. 1992), this court held that the guidelines authorized a district court, in its discretion, to hear constitutional challenges to prior convictions which had not previously been ruled invalid. In exercising its discretion, we instructed district courts to consider: (1) the scope of the inquiry that would be needed to determine the validity of the conviction, including whether the issue is contested and whether the invalidity is apparent from the record; (2) comity; and (3) whether the defendant has a remedy other than the sentencing proceeding through which to attack the prior conviction. **Id.** at 1316. In **Canales**, we laid down the general rule that a district court "should ordinarily entertain a challenge to a prior

conviction in a sentencing hearing if it does not appear that the defendant has an alternative remedy through which to challenge the conviction." **Id.** at 1317.

Robledo argues that, under **Canales**, the district court abused its discretion in refusing to allow him to attack the burglary conviction. He argues that the scope of the inquiry required to determine the validity of his conviction is not great, especially considering the effect of the conviction on his sentence. He argues that the adequacy of the plea colloquy could be assessed by a review of the transcript of his plea and the issue of coercion could be resolved with brief testimony. He also argues that the district court erred in determining that he had an alternative remedy because he had no right to a direct appeal of the burglary conviction.

Robledo's argument is without merit. The issue whether Robledo's plea was coerced is not apparent from the record and would require an inquiry of a fairly extensive magnitude. Further, in **Canales**, this Court stated that a "key consideration" in determining whether to allow a challenge to a state court conviction "often may be whether the defendant has a remedy other than the sentencing proceeding through which to attack the prior conviction." **Id.** at 1316. **Canales** did not limit this inquiry to whether the defendant could directly appeal the conviction; the court specifically noted the possibilities of state habeas corpus petitions, § 2255 proceedings, or coram nobis proceedings. **Id.** At the sentencing hearing, the government informed the district court

that Robledo was on parole for the burglary offense until 1997; therefore, he had the option of seeking state habeas relief in state court.<sup>2</sup>

In sum, the district court did not abuse its discretion in declining to entertain Robledo's challenge to his prior conviction at sentencing.

AFFIRMED.

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<sup>2</sup> Robledo also requests en banc reconsideration of **Canales**. En banc hearing of appeals is not favored. Fed. R. App. P. 35(a). Also, Robledo has not complied with the procedural requirements for en banc consideration as set forth in Local Rule 35.2.