

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-2544  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESSIE LOPEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 93-2544  
- - - - -  
(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Following a bench trial the district court found Jessie Lopez guilty of one count of being a felon in possession of a firearm. The court sentenced Lopez as an armed career criminal to a prison term of 293 months.

Lopez argues that there was insufficient evidence to convict him for being a felon in possession of a firearm. In reviewing a bench trial, "the test for evidential sufficiency is whether any substantial evidence supports the finding of guilty and whether

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the evidence is sufficient to justify the trial judge, as trier of the facts, in concluding beyond a reasonable doubt that the defendant was guilty." United States v. Davis, 993 F.2d 62, 66 (5th Cir. 1993) (internal quotation and citation omitted).

Lopez asserts only that there was no evidence establishing that the pistol he possessed had traveled in interstate commerce. This argument is frivolous because Lopez stipulated on the day of trial that the pistol had traveled in interstate commerce. "The parties to a stipulation are bound by the terms actually agreed upon . . . and the agreement is binding until modified[.]" United States v. Alvarado Garcia, 781 F.2d 422, 428 (5th Cir. 1986) (citations omitted), overruled on other grounds, United States v. Bengivena, 845 F.2d 593 (5th Cir.) (en banc), cert. denied, 488 U.S. 924 (1988). Lopez did not challenge the stipulation in district court and does not acknowledge it in his brief on appeal.

Lopez also argues that there was insufficient evidence to sentence him as an armed career criminal. Because Lopez raises this issue for the first time on appeal it is reviewed for plain error. United States v. Rodriguez, 15 F.3d 408, 414 (5th Cir. 1994).

Under Fed. R. Crim. P. 52(b), this Court may correct forfeited errors only when the appellant shows the following factors: (1) there is an error, (2) that is clear or obvious, and (3) that affects his substantial rights. Rodriguez, 15 F.3d at 415-16 (citing United States v. Olano, \_\_\_U.S.\_\_\_, 113 S. Ct. 1770, 1777-79, 123 L. Ed. 2d 508 (1993)). If these factors are

established, the decision to correct the forfeited error is within the sound discretion of the Court, and the Court will not exercise that discretion unless the error seriously affects the fairness, integrity or public reputation of judicial proceedings. Olano, 113 S. Ct. at 1778.

An armed career criminal is inter alia, one who has been convicted of a crime punishable by a prison term exceeding one year and who also has three previous convictions for a violent felony. 18 U.S.C. § 924(e)(1); U.S.S.G. § 4B1.4. A violent felony is any crime punishable by imprisonment for more than a year, that, in relevant part, involves the use of force against another, or is a burglary or other conduct that poses a serious potential risk of physical injury to another. § 924(e)(2)(B).

There was no plain error in this case. Lopez' murder, armed robbery, and burglary convictions, reflected in the presentence report (PSR), support the court's finding that he was an armed career criminal.

AFFIRMED.