

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-20859
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES A. LEBLANC,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-94-115-1
- - - - -

June 29, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Charles LeBlanc argues that the district court erred in imposing an enhanced sentence under 18 U.S.C. § 924(e) because his prior burglary conviction was not a crime of violence under state law.

LeBlanc did not raise this issue in the district court and, thus, it is subject to review for plain error only. 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

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

error, (2) that is clear or obvious, and (3) that affects his substantial rights. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994)(en banc)(citing United States v. Olano, 113 S. Ct. 1770, 1776-79 (1993)), cert. denied, 115 S. Ct. 1266 (1995). 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.

A person convicted of being a felon in possession of a firearm, who has three previous convictions for a violent felony, shall receive an enhanced sentence. See 18 U.S.C. § 924(e)(1). The term "violent felony" includes a burglary offense which is punishable by a term of imprisonment exceeding one year. See § 924(e)(2)(B)(ii).

A burglary is a crime of violence within the meaning of § 924(e) "`without regard to whether the underlying conduct involved actual or potential violence.'" United States v. Merritt, 882 F.2d 916, 919 (5th Cir. 1989) (citation omitted), cert. denied, 496 U.S. 907 (1990). It is not essential that a burglary be considered to be a crime of violence under state law in order to be a "burglary" within the meaning of § 924(e). See United States v. Silva, 957 F.2d 157, 161 (5th Cir.), cert. denied, 113 S. Ct. 250 (1992). A person has been convicted of burglary for § 924(e) enhancement purposes "`if he is convicted of any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or

remaining in, a building or structure, with intent to commit a crime.'" Id. (citation omitted). The Texas burglary statute has the necessary elements to support a "burglary" within the meaning of § 924(e). Id. at 162.

The district court did not commit error, plain or otherwise, in imposing an enhanced sentence based in part on LeBlanc's prior burglary conviction.

LeBlanc also argues that he should not have been sentenced as a armed career offender because being a felon in possession of a firearm is not a crime of violence. LeBlanc's sentence was enhanced under U.S.S.G. § 4B1.4 and 18 U.S.C. § 924(e). He was not sentenced as a career offender under § 4B1.1. LeBlanc has not demonstrated error, plain or otherwise, with regard to this issue.

AFFIRMED.