

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50002
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JULIO COOPER RAMOS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P-93-CR-78
- - - - -
(September 21, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Julio Cooper Ramos appeals his sentence by challenging the district court's finding that he attempted to possess with the intent to distribute marijuana. Ramos' sentence will be upheld "so long as it results from a correct application of the guidelines to factual findings which are not clearly erroneous." United States v. Pigno, 922 F.2d 1162, 1165 (5th Cir. 1991) (internal quotation and citation omitted). "As long as a factual finding is plausible in light of the record as a whole, it is not

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

clearly erroneous." United States v. Wimbish, 980 F.2d 312 313 (5th Cir. 1992), cert. denied, 113 S. Ct. 1913 (1993).

The elements of an attempt offense are as follows:

First, the defendant must have been acting with the kind of culpability otherwise required for the commission of the crime which he is charged with attempting.

Second, the defendant must have engaged in conduct which constitutes a substantial step toward commission of the crime. A substantial step must be conduct strongly corroborative of the firmness of the defendant's criminal intent.

United States v. Mandujano, 499 F.2d 370, 376 (5th Cir. 1974) (citations omitted), cert. denied, 419 U.S. 1114 (1975).

The record describes Ramos' conduct. He agreed to pick up the marijuana on Highway 90. He drove up and down that highway honking the truck's horn. He stopped at the designated marker, and called out someone's name. It is plausible that Ramos attempted to possess with the intent to distribute the marijuana. Therefore, the district court did not clearly err.

AFFIRMED.