

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60767
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE NAJERA-RUBIO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

(CR L-94-124)

(June 13, 1995)

Before POLITZ, Chief Judge, EMILIO M. GARZA and STEWART, Circuit Judges.

PER CURIAM:*

Jorge Najera-Rubio appeals his sentence challenging the 16 point increase under U.S.S.G. §2L1.2(b)(2) in his base offense level. We affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Background

On July 1, 1991, police officers in Laredo, Texas arrested Najera after the owner of a vehicle witnessed Najera and an accomplice enter the vehicle in a shopping center parking lot and steal two cassette players. Najera was subsequently convicted of the felony burglary of a vehicle under section 30.04 of the Texas Penal Code.¹ Najera received a sentence of six years imprisonment but was paroled on May 6, 1992. On May 20, 1992, the Immigration and Naturalization Service deported Najera.

On June 14, 1994, a Border Patrol agent noticed Najera standing in a park in downtown Laredo and recognized him from prior arrests. The officer arrested Najera for illegal entry. Najera pled guilty to one count of illegal entry into the United States in violation of 8 U.S.C. §1326(b).

In calculating Najera's sentencing range under the sentencing guidelines the district court considered his conviction for burglary of a vehicle to be an aggravated felony justifying a 16 point increase in his offense level under U.S.S.G. §2L1.2(b)(2). After considering Najera's criminal history category and a reduction for acceptance of responsibility, the district court calculated the guideline sentencing range to be 70 to 87 months. The court sentenced Najera to 72 months imprisonment followed by three years of supervised release. Najera timely appealed this

¹This provision has since been amended to reduce the crime of burglary of a vehicle to a Class A misdemeanor. Tex. Penal Code Ann. § 30.04 (West 1994).

application of the sentencing guidelines contending that the district court erred in considering his Texas burglary conviction to be an aggravated felony justifying a sixteen level increase under §2L1.2(b)(2).

Discussion

In **United States v. Rodriguez-Guzman**,² we held that the felony burglary of a vehicle under section 30.04 of the Texas Penal Code is an aggravated burglary for the purposes of U.S.S.G. § 2L1.2(b)(2). In so holding, we rejected the fact-specific approach to determining when a burglary is an aggravated felony that Najera seeks to have applied here. That decision is dispositive of the issue presented herein and, accordingly, the sentence of the district court is AFFIRMED.

²No. 94-60379 (5th Cir. June __, 1995).