

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60768
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAMIAN ALDACO-ACOSTA,

Defendant-Appellant.

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

(CR-L-94-125)

(June 13, 1995)

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

PER CURIAM:*

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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

In 1988 Aldaco was convicted in Texas state court for his role as a lookout during the burglary of a nonresidential building.¹ He was sentenced to five years imprisonment suspended to five years probation. The Immigration and Naturalization Service deported Aldaco in 1990, 1991, and 1994. Aldaco illegally reentered the country after each deportation.

In June of 1994, after the most recent deportation, officers of the Laredo, Texas Police Department apprehended Aldaco shortly after he had lead a group of undocumented aliens across the border. Aldaco pled guilty to one count of illegal reentry into the United States in violation of 8 U.S.C. §1326(b).

In calculating the applicable sentencing range, the district court considered Aldaco's Texas burglary conviction to be an aggravated felony warranting a 16 level increase in Aldaco's base offense computation under U.S.S.G. §2L1.2(b)(2). After considering his criminal history category and other unchallenged adjustments, the district court concluded that the applicable sentencing range was 77 to 96 months. Aldaco was sentenced to 78 months imprisonment followed by three years of supervised release.

Aldaco timely appealed his sentence, contending that his Texas burglary conviction is not an aggravated felony justifying a 16 level increase under §2L1.2(b)(2).

¹Tex. Penal Code Ann. §30.02 (West 1994).

Discussion

In our recent decision in **United States v. Rodriguez-Guzman**,² we held that a conviction under section 30.02 of the Texas Penal Code for the burglary of a nonresidential building was an "aggravated felony" as that term is used in U.S.S.G. §2L1.2(b)(2). 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).