

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50126
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

APOLINAR ARIZMENDE-MATIAS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. A-97-CR-167-ALL

- - - - -
August 18, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Apolinar Arizmende-Matias has appealed the sentence imposed following his conviction for returning illegally to the United States following deportation. Arizmende contends that his state-court cocaine-possession conviction was not a "drug trafficking crime," under 18 U.S.C. § 924(c)(2) and did not constitute an "aggravated felony" for purposes of U.S.S.G. § 2L1.2(b)(1)(A). Accordingly, Arizmende argues, the district court erred in adjusting his offense level upward by 16 levels pursuant to § 2L1.2(b)(1)(A). Arizmende concedes that the court resolved

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

this issue to the contrary in United States v. Hinojosa-Lopez, 130 F.3d 691, 693-94 (5th Cir. 1997). Because the appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.

APPEAL DISMISSED.