

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50395
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PEDRO THIESSEN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P-97-CR-229-2
- - - - -
December 10, 1998

Before JOLLY, SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Pedro Thiessen appeals his sentence following a guilty-plea conviction for importation of marijuana and possession with intent to distribute marijuana. He challenges the district court's finding that he was not entitled to a reduction in his offense level for his minor role in the offenses.

We do not address Thiessen's argument regarding Stinson v. United States, 508 U.S. 36 (1993), and the commentary to § 3B1.2 because the district court did not apply a "substantially less culpable" standard. Although the district court found initially

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that Thiessen was less culpable than Harms in the overall scheme, in light of the length of the proposed journey from Mexico to Canada and all that entailed, the district court determined that Thiessen and Harms must have "joined up in a partnership" to carry out the offenses charged. The court's finding that Thiessen was not a minor participant is not clearly erroneous. The district court's determination that Thiessen was less culpable than Harms or other participants did not, standing alone, entitle him to the two-point reduction of a minor participant. See United States v. Zuniga, 18 F.3d 1254, 1261 (5th Cir. 1994); United States v. Thomas, 932 F.2d 1085, 1092 (5th Cir. 1992). Accordingly, the judgment of the district court is AFFIRMED.