

REVISED February 13, 2013

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 11-41377
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 23, 2013

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAVIER HERNANDEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:09-CR-1846-1

Before JONES, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:*

Javier Hernandez appeals from his conviction of possession with intent to distribute marijuana. He contends on appeal that the district court improperly and without jurisdiction ordered him removed from the United States as part of his sentence. This argument was not raised in the district court. Thus, review is for plain error. See *United States v. Peltier*, 505 F.3d 389, 391-92 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

2007). He further argues that the written judgment, which does not contain a removal order, conflicts with the oral imposition of sentence and that the case should be remanded for resentencing. Such arguments are reviewed for abuse of discretion. *United States v. Bigelow*, 462 F.3d 378, 381 (5th Cir. 2006).

The district court did not order Hernandez removed from the United States as part of his sentence. The only mention of deportation while the sentence was being imposed was that while on supervised release, Hernandez would be subject to the standard conditions of the Southern District “to include all statutory requirements without supervision if he is deported.” Only after imposing sentence and advising Hernandez of his appellate rights did the district court ask whether Hernandez knew when he pleaded guilty that he would be deported. Hernandez has not shown error, plain or otherwise.

AFFIRMED.