

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

April 15, 2014

Lyle W. Cayce
Clerk

No. 13-40834

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MIGUEL ANGEL ECHEVARRIA-JIMENEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:12-CR-962

Before HIGGINBOTHAM, DENNIS, and GRAVES, Circuit Judges.

PER CURIAM:*

Miguel Angel Echevarria-Jimenez (Echevarria) appeals the 57-month sentence imposed following his guilty plea conviction for being unlawfully found in the United States after deportation, having previously been convicted of a felony. Echevarria argues that the 16-level enhancement for being found in the United States after a felony drug trafficking offense was not warranted because his 2008 conviction for possession with intent to deliver a controlled

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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substance could have been charged as a misdemeanor under federal law and, as a result, the conviction was not a “felony” for purposes of U.S.S.G. § 2L1.2(b)(1). Echevarria also argues that counsel rendered ineffective assistance by failing to argue that the 2008 conviction was not a felony for purposes of § 2L1.2(b)(1). He contends that the appeal waiver in his plea agreement does not preclude him from raising an ineffective assistance of counsel claim on direct appeal.

The Government moves for dismissal because Echevarria’s appeal is barred by the waiver of appeal in the plea agreement. In the alternative, the Government requests an extension of time to file its appellate brief.

A review of the record shows that Echevarria knowingly and voluntarily waived his right to appeal his sentence, *see United States v. Portillo*, 18 F.3d 290, 292 (5th Cir. 1994), and that his arguments are barred by the appeal waiver. Therefore, the appeal is DISMISSED. The Government’s alternative motion to extend the time to file its brief is DENIED as moot.