

February 13, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40021
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICARDO ALANIZ, also known as Richard Alaniz,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-6-1

Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Ricardo Alaniz appeals the 210-month sentence imposed following his plea of guilty to possession with intent to distribute cocaine. He contends that the district court committed clear error by increasing his sentence pursuant to U.S.S.G. § 3B1.1(b), based on a finding that Alaniz exercised a managerial role in a criminal activity involving five or more persons.

The district court's determination of Alaniz's role in the offense was plausible in light of the record as a whole, and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Alaniz did not present evidence rebutting the factual findings of the presentence report (PSR). Accordingly, the district court was entitled to rely on the PSR's factual findings showing Alaniz exercised managerial control and that the criminal activity involved five or more persons. See United States v. Caldwell, 448 F.3d 287, 290, 293 (5th Cir. 2006). Alaniz has failed to show that the district court committed clear error. See id. at 290.

The judgment of the district court is AFFIRMED.