

February 13, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-50173
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FILIBERTO VIVANCO-ATRIANO,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:05-CR-251

Before BARKSDALE, GARZA, and CLEMENT, Circuit Judges.

PER CURIAM:*

Filiberto Vivanco Atriano (Vivanco) appeals his sentence following his convictions for possession of marijuana with intent to distribute and importation of marijuana. He argues that the district court misapplied the Sentencing Guidelines when it erroneously denied him a minor-participant role adjustment to his offense level under U.S.S.G. § 3B1.2. Vivanco contends that he was a simple courier. He argues that the district court failed to consider the totality of the circumstances when applying the Guidelines and instead erroneously stated that it could apply the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

minor-participant role adjustment under § 3B1.2 only in "exceptional" circumstances.

We conclude that Vivanco has not shown that the district court clearly erred when it denied him a minor-participant role adjustment. See United States v. Atanda, 60 F.3d 196, 198-99 (5th Cir. 1995).

AFFIRMED.