

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

April 15, 2008

No. 07-40404
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

RECO DAMON MCGENSY

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:06-CR-1335-1

Before PRADO, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Reco Damon McGensy was convicted of two counts of transporting illegal aliens within the United States for financial gain and was sentenced to serve 30 months in prison. McGensy argues on appeal that he was entitled to a two-level reduction pursuant to U.S.S.G. § 3B1.2(b) based upon his role in the offense.

McGensy contends that he was significantly less culpable than other participants because he was not the owner or driver of the tractor-trailer in which the aliens were found and because his mental state constituted an

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

impediment to his ability to reason or take a leadership role in the offense. The evidence presented at trial and in the presentence report indicated that McGensy may have participated in the decision to transport the aliens, that he concealed the aliens, and that he gave the aliens advice to facilitate their concealment. Accordingly, the district court's finding that McGensy was not entitled to this minor-role adjustment is plausible in light of the record as a whole. See *United States v. Villanueva*, 408 F.3d 193, 203 & n.9 (5th Cir. 2005). Because McGensy has shown no error in the district court's judgment, that judgment is AFFIRMED.