

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

United States Court of Appeals
Fifth Circuit

FILED
July 25, 2011

No. 10-41084
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FELIX GUERRA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:10-CR-657-1

Before HIGGINBOTHAM, BENAVIDES and ELROD, Circuit Judges.

PER CURIAM:*

Felix Guerra appeals his sentence for being unlawfully present in the United States after having been deported in violation of 8 U.S.C. § 1326. Guerra argues that the district court committed plain error by assigning two criminal history points to his 1996 conviction for possession of marijuana. The Government concedes that the incorrect criminal history calculation resulted in reversible plain error.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 10-41084

After reviewing the record and the applicable law, we agree that the district court committed plain error by assigning two criminal history points to Guerra's 1996 conviction for possession of marijuana. *See United States v. Arviso-Mata*, 442 F.3d 382, 385 (5th Cir. 2006); § 4A1.2(e)(1)–(3); § 4A1.2(k)(2)(B). Accordingly, we vacate Guerra's sentence and remand for resentencing. *See Arviso-Mata*, 442 F.3d at 385.

CONVICTION AFFIRMED; SENTENCE VACATED; CASE REMANDED