IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
June 10, 2014
Lyle W. Cayce
Clerk

No. 13-40098
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SAMUEL ADAN CASTILLO-RAMIREZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-547-1

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

Before HIGGINBOTHAM, SMITH, and GRAVES, Circuit Judges.

PER CURIAM:*

We granted appellant Samuel Adan Castillo-Ramirez's motion for summary disposition and affirmed, *United States v. Castillo-Ramirez*, 539 F. App'x 400 (5th Cir. 2013), because Castillo-Ramirez's challenge to the denial of an additional one-level reduction under U.S.S.G. § 3E1.1(b) was foreclosed by *United States v. Newson*, 515 F.3d 374, 377-78 (5th Cir. 2008). The Supreme

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Court vacated and remanded "for further consideration in light of the position asserted by the Solicitor General." *Garcia v. United States*, 134 S. Ct. 1539 (2014).

Amendment 775 to the United States Sentencing Guidelines, which became effective November 1, 2013, after the decision by this court, provides that the government should not withhold the additional one-level reduction under § 3E1.1(b) based on interests not identified in the guideline, such as whether the defendant agrees to waive the right to appeal. U.S.S.G. Manual, Supp. to App. C, Amendment 775, at 43-46 (2013). In *United States v. Villegas Palacios*, No. 13-40153, 2014 WL 2119096, at *1 (5th Cir. May 21, 2014), we applied Amendment 775 to a case on direct appeal in which the error was preserved and the government conceded error. The panel announced that

> the other judges on the Court have reviewed this opinion, and all active judges have assented. The Court en banc therefore concludes *Newson*—to the extent it may constrain us from applying Amendment 775 to cases pending on direct appeal under our rule of orderliness—is abrogated in light of Amendment 775.

Id. n.1.

In light of the Supreme Court's order and *Villegas Palacios*, the judgment is VACATED and REMANDED for resentencing.