

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 4, 2022

Lyle W. Cayce
Clerk

No. 21-40631
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JESUS IVAN RESENDEZ-GOMEZ,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:19-CR-1501-3

Before KING, COSTA, and HO, *Circuit Judges.*

PER CURIAM:*

Jesus Ivan Resendez-Gomez appeals his 170-month sentence for conspiracy to possess with the intent to distribute 500 grams or more of methamphetamine. He argues the district court erred in denying him a mitigating role reduction under U.S.S.G. § 3B1.2.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-40631

Whether a defendant is a minor or minimal participant under § 3B1.2 is a factual finding that we review for clear error. *United States v. Castro*, 843 F.3d 608, 612 (5th Cir. 2016). “A factual finding is not clearly erroneous if it is plausible in light of the record read as a whole.” *Id.* (internal quotation marks and citation omitted). Resendez-Gomez is entitled to a mitigating role adjustment only if he shows by a preponderance of the evidence: “(1) the culpability of the average participant in the criminal activity; and (2) that [he] was substantially less culpable than that participant.” *Id.* at 613 (footnote omitted). A mitigating role adjustment is warranted only if the defendant “was peripheral to the advancement of the illicit activity.” *Id.* at 613-14 (internal quotation marks and citation omitted).

Resendez-Gomez has not made the required showing, as the record reflects that he supplied the methamphetamine involved in the conspiracy, he knew he was supplying the drugs for further distribution, and, among his identified co-conspirators, he received the largest percentage of proceeds from the drug transactions at issue. Based on the record as a whole, it is plausible that Resendez-Gomez was not peripheral to the advancement of the conspiracy, and the district court did not clearly err in denying a mitigating role reduction. *See id.* at 612-14. Accordingly, the district court’s judgment is AFFIRMED.