

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

July 13, 2022

Lyle W. Cayce
Clerk

No. 21-40710
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

CARLOS ALEJANDRO ZUNIGA-GARCIA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:20-CR-75-2

Before SMITH, DENNIS, and SOUTHWICK, *Circuit Judges.*

PER CURIAM:*

Carlos Alejandro Zuniga-Garcia pleaded guilty to conspiracy to possess with intent to distribute 100 grams or more of a mixture or substance containing Fentanyl. The district court sentenced him to 135 months of imprisonment. On appeal, Zuniga-Garcia contends that the district court

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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erred in applying a four-level upward adjustment under U.S.S.G. § 3B1.1(a) for his role as an organizer or leader in the criminal scheme and in declining to apply a two-level minor participant downward adjustment under U.S.S.G. § 3B1.2(b).

We review the district court's application of these guidelines provisions for clear error. *See United States v. Castro*, 843 F.3d 608, 612 (5th Cir. 2016); *United States v. Cabrera*, 288 F.3d 163, 173 (5th Cir. 2002). Factual findings are not clearly erroneous if they are plausible in light of the record as a whole. *United States v. Zuniga*, 720 F.3d 587, 590 (5th Cir. 2013).

Section 3B1.1(a) provides for a four-level increase “[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.” Section 3B1.2(b) authorizes a two-level downward adjustment for a defendant who was a “minor participant.” A minor participant is one who is “less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.” § 3B1.2, comment. (n.5).

The un rebutted evidence supports inferences that Zuniga-Garcia played a significant role in planning and organizing the attempted drug transaction, recruiting accomplices, and directing at least one other co-conspirator through a prison phone line that he paid another inmate to use. The district court's findings that he was an organizer or leader of the criminal conspiracy and not a minor participant were plausible in light of the record as a whole. *See Castro*, 843 F.3d at 612; *Zuniga*, 720 F.3d at 590; *Cabrera*, 288 F.3d at 173.

AFFIRMED.