

United States Court of Appeals for the Fifth Circuit

No. 22-10084
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 25, 2022

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

JOSE OVIDIO ESQUIVEL,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:21-CR-6-1

Before SOUTHWICK, HIGGINSON, and WILLET, *Circuit Judges.*

PER CURIAM:*

Jose Ovidio Esquivel pleaded guilty to possessing stolen mail, in violation of 18 U.S.C. § 1708, and was sentenced to nine months in prison and three years of supervised release. Because the stolen mail found in his possession was addressed to only seven apartment units, Esquivel contends

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.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. 22-10084

that the district court erred in applying a two-level sentencing enhancement under U.S.S.G. § 2B1.1(b)(2)(A) for an offense involving 10 or more victims.

Even if the district court erred in applying the enhancement under § 2B1.1(b)(2)(A), however, any such error was harmless. The district court stated that, even if it were to sustain Esquivel's objection concerning § 2B1.1(b)(2)(A), it would nonetheless vary upwards due to the extent of Esquivel's conduct and sentence him to the same nine months. Any error, therefore, was harmless. *See United States v. Guzman-Rendon*, 864 F.3d 409, 411 (5th Cir. 2017).

Accordingly, the judgment of the district court is AFFIRMED.