

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-41428
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO LEON-GONZALEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:99-CR-9-ALL

June 14, 2000

Before JOLLY, DAVIS, and STEWART, Circuit Judges.

PER CURIAM:*

Francisco Leon-Gonzalez appeals his sentence for possession of a firearm by an illegal alien and distribution of cocaine. 18 U.S.C. § 922(g)(5); 21 U.S.C. § 841(a)(1). Leon argues that the district court erred in increasing his base offense level two points under U.S.S.G. § 2K2.1(b)(4) on the ground that two of the firearms involved in the offense were stolen. He contends that he did not know that the firearms were stolen and that the Government did not prove that the firearms were stolen.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The enhancement under § 2K2.1(b)(4) applies whether or not Leon knew or had reason to believe that the firearms were stolen. See United States v. Singleton, 946 F.2d 23, 27 (5th Cir. 1991); § 2K2.1, comment (n.19). Because Leon did not present rebuttal evidence to refute the facts in the PSR concerning whether the firearms were stolen, the district court did not err in adopting the facts in the PSR and in increasing Leon's offense level under § 2K2.1(b)(4). United States v. Sherbak, 950 F.2d 1095, 1099-1100 (5th Cir. 1992).

AFFIRMED.