

June 19, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-51046
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAFAEL SOTO-MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 2:04-CR-991-ALL

Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Rafael Soto-Martinez appeals his sentence following his guilty-plea conviction for importation of less than 50 kilograms of marijuana, in violation of 21 U.S.C. §§ 952 and 960. He argues that the district court clearly erred in denying him a minimal or minor role adjustment to his offense level under U.S.S.G. § 3B1.2. Soto-Martinez contends that he was a mere courier who was substantially less culpable than other participants in the offense.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We review the district court's application of the Sentencing Guidelines de novo and review factual findings for clear error. United States v. Villanueva, 408 F.3d 193, 203 & n.9 (5th Cir. 2005); United States v. Villegas, 404 F.3d 355, 359 (5th Cir. 2005). Pursuant to § 3B1.2, a district court may decrease a defendant's offense level by four levels if the defendant was a minimal participant in the criminal activity or by two levels if the defendant was a minor participant.

As Soto-Martinez's role in the offense was not minimal or minor, the district court did not clearly err in denying him a role adjustment under § 3B1.2. See United States v. Atanda, 60 F.3d 196, 199 (5th Cir. 1995); United States v. Nevarez-Arreola, 885 F.2d 243, 245 (5th Cir. 1989); United States v. Buenrostro, 868 F.2d 135, 137-38 (5th Cir. 1989). The district court's judgment is AFFIRMED.