

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 2, 2012

Lyle W. Cayce
Clerk

No. 11-41328
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

ARTEMIO LOMAS

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:11-CR-770-2

Before JONES, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:*

A jury convicted Artemio Lomas of one count of conspiracy to possess with intent to distribute 1,000 kilograms or more of marijuana in violation of 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(A) and two counts of possession with intent to distribute 100 kilograms or more of marijuana in violation of § 841(a)(1), (b)(1)(B). The district court sentenced Lomas to three concurrent terms of 151 months in prison. Lomas argues for the first time on appeal that the district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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court erred in calculating the drug quantity attributable to him under the Sentencing Guidelines by using the gross weight rather than the net weight.

Because Lomas did not object in the district court to the drug quantity attributed to him, our review is for plain error. *United States v. Conn*, 657 F.3d 280, 284 (5th Cir. 2011); *United States v. Sparks*, 2 F.3d 574, 589 (5th Cir. 1993). Simply put, Lomas has not demonstrated that the court used the gross weight rather than the net weight. Neither the trial testimony nor the presentence report (PSR) referenced either gross weight or net weight. Furthermore, the district court was entitled to rely on the jury's finding that Lomas conspired to possess with intent to distribute 1000 kilograms or more of marijuana and Lomas's admission that the facts in the PSR were correct. *See United States v. Arnold*, 416 F.3d 349, 362 (5th Cir. 2005); *United States v. Ramirez*, 557 F.3d 200, 204 (5th Cir. 2009). In light of the trial testimony, the jury's finding, and Lomas's admission, Lomas has not show that the district court committed any error, and certainly not clear or obvious error, when it relied on the drug quantity indicated in the PSR. *See United States v. Rodriguez*, 602 F.3d 346, 363 (5th Cir. 2010).

AFFIRMED.