

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

United States Court of Appeals
Fifth Circuit

FILED

July 7, 2015

Lyle W. Cayce
Clerk

No. 14-41338
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JESUS MARIN-ARRELLANES, also known as Jesus Marin-Arellanes,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:14-CR-1031-1

Before SMITH, WIENER, and ELROD, Circuit Judges.

PER CURIAM:*

Jesus Marin-Arellanes was convicted of one count of illegal reentry into the United States and was sentenced to serve 46 months in prison. Now, he challenges the district court's determination that his prior North Carolina conviction for conspiracy to commit robbery with a dangerous weapon was a crime of violence (COV) under U.S.S.G. § 2L1.2 and an aggravated felony under 8 U.S.C. § 1326(b)(2). He argues that his prior conviction should not be

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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considered a COV or a § 1326(b)(2) aggravated felony because it lacks an overt act requirement. Because he did not raise this argument in the district court, we review for plain error only.

To establish plain error, Marin-Arellanes must show a forfeited error that is clear or obvious and that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). If he makes such a showing, we have discretion to correct the error but will do so only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

Marin-Arellanes asserts that his current argument is foreclosed by *United States v. Pascacio-Rodriguez*, 749 F.3d 353, 367-68 (5th Cir. 2014). In that case we held that a Nevada conviction for conspiracy to commit murder, which likewise does not require an overt act, constituted a COV for purposes of the § 2L1.2(b)(1)(A)(ii) enhancement. *Pascacio-Rodriguez* rejected arguments similar to those raised by Marin-Arellanes. In view of *Pascacio-Rodriguez*, Marin-Arellanes has not established clear or obvious error on the part of the district court.

Although we affirm the district court's judgment, summary disposition is not appropriate. *See United States v. Holy Land Found. for Relief & Dev.*, 445 F.3d 771, 781 (5th Cir. 2006). Accordingly, we deny Marin-Arellanes's motion for summary disposition.

AFFIRMED; MOTION DENIED.