

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

No. 15-10479
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 18, 2016

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

SALVADOR ALVARADO,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 5:14-CR-137-1

Before REAVLEY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Salvador Alvarado appeals the 293-month sentence he received following his guilty plea conviction for possession of methamphetamine with the intent to distribute, in violation of 21 U.S.C. § 841. For the first time on appeal, he argues that the district court erred in basing his sentence on 4.6 kilograms of actual methamphetamine when the undisputed facts show that he bought

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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three ounces of methamphetamine and five kilograms of a “simulated substance.”

As Alvarado concedes, because he did not raise his appellate argument in the district court, review is for plain error only. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). However, the amount of methamphetamine attributable to Alvarado is a finding of fact which was capable of resolution upon proper objection in the district court and thus cannot constitute plain error. *See United States v. Vital*, 68 F.3d 114, 120 (5th Cir. 1995); *see also United States v. Lopez*, 923 F.2d 47, 50 (5th Cir. 1991). Consequently, the district court’s judgment is AFFIRMED.