

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

No. 15-10876
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

January 12, 2017

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ARMANDO GARCIA-GARCIA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:15-CR-49-1

Before HIGGINBOTHAM, PRADO, and HAYNES, Circuit Judges.

PER CURIAM:*

Armando Garcia-Garcia pleaded guilty to illegal reentry, in violation of 8 U.S.C. § 1326(b), and the district court varied below the advisory guidelines range and sentenced him to 41 months in prison. Although Garcia-Garcia challenged in the district court the application of a 16-level “crime of violence” enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(i) (2014) based on his prior Texas drug conviction, he raises a new argument on appeal.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Garcia-Garcia argues that his prior conviction for possession with intent to deliver a controlled substance under Texas Health & Safety Code Annotated § 481.112(a) does not qualify as an enumerated crime of violence, a “drug trafficking offense” as defined in § 2L1.2, comment. (n.(1)(b)(iv)) (2014). Although Garcia-Garcia asserts that *United States v. Ford*, 509 F.3d 714, 717-18 (5th Cir. 2007), is not controlling, he believes that he cannot show plain error because this court has not yet limited *Ford*. He raises the issue to preserve review and argues that, because the error affects his substantial rights, this court should exercise discretion to reverse the error.

Because this issue is raised for the first time on appeal, we review for plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). Neither this court nor the Supreme Court has addressed this issue, which is subject to reasonable dispute. A claim subject to reasonable dispute cannot succeed on plain error review. *Puckett*, 556 U.S. at 135; *United States v. Fields*, 777 F.3d 799, 802 (5th Cir. 2015).

AFFIRMED.