

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

March 25, 2008

No. 05-41468

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

JESUS PADILLA-GOMEZ, also known as, Armando Martinez-Vasquez
also known as, Jesus Padilla

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-00409-ALL
SCOTUS No. 06-7871

On Remand from the Supreme Court of the United States

Before JOLLY, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

This case is on remand from the United States Supreme Court, which vacated our judgment, see *United States v. Padilla-Gomez*, 203 F. App'x 597 (5th Cir. 2006), and remanded the case to us for further consideration in light of *Lopez v. Gonzales*, 127 S. Ct. 625 (2006). See *Ochoa-Perez v. United States*, 127 S. Ct. 1263 (2007).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Padilla-Gomez pleaded guilty to the crime of illegally reentering the United States after deportation, in violation of 8 U.S.C. § 1326. Padilla-Gomez's conviction is AFFIRMED; Padilla-Gomez's sentence is VACATED and REMANDED to the district court for resentencing in accordance with Lopez. We express no opinion on the issue of whether the § 2L1.2(b)(1)(C) enhancement was appropriate because Padilla-Gomez's 2000 and 2002 possession offenses qualified as "recidivist possession."¹ See Lopez, 127 S. Ct. at 630 n. 6; United States v. Sanchez-Villalobos, 412 F.3d 572, 576-77 (5th Cir. 2005).

* * *

THE CLERK IS INSTRUCTED TO ISSUE THE MANDATE FORTHWITH.

¹ Padilla-Gomez was convicted of three state felony drug offenses, first on August 23, 1994, second on August 9, 2000, and third on October 3, 2002. PSR, ¶¶ 21, 28, 30.