

United States Court of Appeals
Fifth Circuit

FILED

August 13, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40949
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY MICHAEL WALTERS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:04-CR-1182-ALL

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges:

PER CURIAM:*

Larry Michael Walters appeals the sentence imposed following his guilty plea conviction for transporting an undocumented alien by means of a motor vehicle for private financial gain. Walters argues that the district court erred by increasing his offense level pursuant to U.S.S.G. § 2L1.1(b)(5) after finding that the offense "involved intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person." Even after United States v. Booker, 543 U.S. 220 (2005), we review the district court's findings of fact for clear error and

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the district court's interpretation and application of the Sentencing Guidelines de novo. United States v. Villanueva, 408 F.3d 193, 202 & n.9 (5th Cir. 2005).

The record reflects that Walters was driving a tractor-trailer carrying five illegal aliens. Three of the aliens were hiding in a compartment under the bunk in the tractor's sleeper area from which they could not easily extricate themselves. The district court did not err in concluding that these circumstances qualified as intentional or reckless creation of a "substantial risk of death or serious bodily injury to another person." See United States v. Rodriguez-Mesa, 443 F.3d 397, 401-03 (5th Cir. 2006); U.S.S.G. § 2L1.1, comment.(n.6).

AFFIRMED.