United States Court of Appeals
Fifth Circuit

F I L E D

April 10, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-51159
Summary Calendar

UNITED STATES OF AMERICA,

                                        Plaintiff-Appellee,

versus

RODRIGO ANTONIO VEGA-AVILA,
also known as Rodrigo Avila-Mendez,
also known as Rodrigo Antonio Avila,

                                        Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
No. 3:05-CR-2725-ALL

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:[*]

    Rodrigo Vega-Avila pleaded guilty of illegal reentry after de-
portation. He argues, for the first time on appeal, that his sen-
tence is unreasonable because the district court employed imper-
missible double-counting and thus improperly calculated his guide-
line range when it increased his offense level and criminal history

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    [*] 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opinion should not be published and is not precedent except under the limited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.

points based on the same prior illegal reentry conviction. Citing
United States v. Henry, 288 F.3d 657 (5th Cir. 2002), Vega further
contends that his criminal history should not have been increased
based on his prior illegal reentry conviction, because it was an
element of the instant offense.

The district court did not plainly err in sentencing Vega, be-
cause the guidelines do not prohibit such double-counting, because
Henry is distinguishable from the instant case, and because this
court has approved of such double-counting under similar circum-
stances concerning U.S.S.G. § 2K1.2. See U.S.S.G. § 2L1.2, com-
ment. (n.6); Henry, 288 F.3d at 659, 664-65; United States v. Gay-
tan, 74 F.3d 545, 560 (5th Cir. 1996); United States v. Hawkins,
69 F.3d 11, 14-15 (5th Cir. 1995).

AFFIRMED.