

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

July 15, 2008

No. 07-51419
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

NORA JOSEFINA ROBLES

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:07-CR-1559-ALL

Before STEWART, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Nora Josefina Robles appeals the sentence imposed following her guilty plea conviction of importation of marijuana, possession with intent to distribute marijuana, and illegal reentry. She argues that the district court clearly erred by denying her motion for a two-level reduction under U.S.S.G. § 3B1.2(b) because she had a minor role in the offense.

A Section 3B1.2 reduction applies only when a defendant is substantially less culpable than the average participant. *United States v. Villanueva*, 408

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

F.3d 193, 203 & n.9 (5th Cir. 2005). Robles's courier status alone did not entitle her to a role adjustment because a defendant may be a courier without being "substantially less culpable than the average participant." *United States v. Brown*, 54 F.3d 234, 241 (5th Cir. 1995) (internal quotation marks and citation omitted) (emphasis in original). If a sentence is based on activity in which a defendant was actually involved, Section 3B1.2 does not require a reduction in the base offense level even though the defendant's activity in a larger conspiracy may have been minor. *United States v. Atanda*, 60 F.3d 196, 199 (5th Cir. 1995).

Robles admitted to transporting 40.47 kilograms of marijuana across the border and she admitted that she suspected that the vehicle that she was driving across the border contained the drugs. Her sentence was based on the amount of drugs which were present in the vehicle. Accordingly, the district court did not clearly err in denying her request for a reduction based on her role in the offense. The judgment is AFFIRMED.