

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

United States Court of Appeals
Fifth Circuit

FILED

February 20, 2009

No. 08-40349
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NELSON ARCENY CARALES-VILLALTA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
No. 5:07-CR-764-ALL

Before SMITH, STEWART, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Nelson Carales-Villalta pleaded guilty of illegal reentry following removal. He argues that the district court erred in enhancing his sentence under U.S.S.G.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 2L1.2(b)(1)(C) based on the determination that a prior Texas conviction for delivery of a controlled substance is an aggravated felony. The government concedes that the sentence enhancement is erroneous and that the error is not harmless. We agree. *See United States v. Morales-Martinez*, 496 F.3d 356, 360-61 (5th Cir.), *cert. denied*, 128 S. Ct. 410 (2007); *United States v. Fuentes*, 245 F. App'x 358 (5th Cir.) (per curiam), *cert. denied*, 128 S. Ct. 410 (2007). We find no error in the district court's use of the term "Re-entry of a Deported Alien" in the written judgment of conviction. *See United States v. Buendia-Rangel*, No. 07-40879, 2008 WL 5221160, at *1 (5th Cir. Sept. 9, 2008) (per curiam) (unpublished).

CONVICTION AFFIRMED; SENTENCE VACATED; CASE REMANDED FOR RESENTENCING.