

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

United States Court of Appeals
Fifth Circuit

FILED

August 18, 2009

No. 08-50818
Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CARLOS RENE MACHUCA,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:08-CR-55-1

Before HIGGINBOTHAM, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Carlos Rene Machuca appeals the sentence imposed following his jury convictions for conspiracy to commit bank fraud, aiding and abetting bank fraud, money laundering, and aiding and abetting identity theft. Machuca argues that a U.S.S.G. § 3C1.1 enhancement for perjury unconstitutionally infringes on a defendant's right to testify on his own behalf in a criminal proceeding because the Government may prove the enhancement by only a preponderance of the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

evidence. This argument is foreclosed. *See United States v. Dunnigan*, 507 U.S. 87, 96-97 (1993); *United States v. Gourley*, 168 F.3d 165, 171 n.10 (5th Cir. 1999).

AFFIRMED.