

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 22, 2009

No. 08-51182
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ENRIQUE LUMDURY CASTELLANOS, also known as Kiki,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:08-CR-666-1

Before GARZA, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Enrique Lumdury Castellanos (Lumdury) was convicted of, *inter alia*, a marijuana conspiracy with Jorge Luis Saenz and others. He now appeals the district court's denial of a two-level minor role adjustment pursuant to U.S.S.G. § 3B1.2. For the following reasons, we affirm.

We review the district court's conclusion that Lumdury was not a minor participant for clear error. *See United States v. Villanueva*, 408 F.3d 193, 203 & n.9 (5th Cir. 2005). The presentence report and the factual basis provided,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

inter alia, that when police searched Lumdury's home, they found over 27 pounds of marijuana and roughly \$55,000 in cash concealed in the walls, as well as items consistent with the resale of marijuana; that Lumdury had also stored another load of marijuana at his home for Saenz; that Lumdury had sold marijuana for Saenz; and that Lumdury had conversations with a coconspirator after Saenz was arrested during which he discussed undertaking efforts to secure Saenz's release on bail and arrange for a lawyer for Saenz and another coconspirator. Given these facts, we cannot say that the district court's conclusion that Lumdury was not a minor player, i.e., that his involvement was not peripheral to the advancement of the criminal activity, was implausible in light of the record as a whole. *See Villaneuava*, 408 F.3d at 203-04.

The judgment of the district court is AFFIRMED.