

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

United States Court of Appeals
Fifth Circuit

FILED

November 30, 2009

No. 09-10097
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ANTONIO GONZALEZ-MOLINA,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:08-CR-132-1

Before BENAVIDES, PRADO, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Antonio Gonzalez-Molina appeals his sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326(a). Gonzalez-Molina contends that the district court committed plain error by applying a 16-level increase to his offense level based on its finding that his 2000 Pennsylvania conviction for aggravated assault was a crime of violence under U.S.S.G. § 2L1.2(b)(1)(A)(ii). The Government concedes that neither the law nor the record establishes that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gonzalez-Molina's prior conviction was a crime of violence for purposes of the enhancement and that it was plain error to increase Gonzalez-Molina's sentence based on that conviction.

After reviewing the record and the applicable law, we agree that the district court committed plain error by using Gonzalez-Molina's Pennsylvania aggravated-assault conviction to increase his sentence. *See United States v. Fierro-Reyna*, 466 F.3d 324, 327-29 (5th Cir. 2006); *United States v. Alfaro*, 408 F.3d 204, 211 (5th Cir. 2005). Accordingly, we vacate Gonzalez-Molina's sentence and remand for resentencing. *See Alfaro*, 408 F.3d at 211.

CONVICTION AFFIRMED; SENTENCE VACATED; CASE REMANDED