

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

United States Court of Appeals  
Fifth Circuit

**F I L E D**

August 3, 2010

No. 09-40885  
Summary Calendar

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FRANCISCO ZAVALA-FLORES,

Defendant-Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 7:09-CR-597-1

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Before BENAVIDES, PRADO and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Francisco Zavala-Flores appeals his 57 month sentence for being illegally present in the United States following deportation. He argues that the district court erred in enhancing his criminal history category pursuant to U.S.S.G. § 4A1.1(f) on the ground that three indecency with a child convictions in violation of TEXAS PENAL CODE § 21.11(a)(2)(A) were crimes of violence for which he received a single sentence. Zavala-Flores properly concedes that his

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

argument is subject to review for plain error because he did not raise the issue at sentencing.

To establish plain error, Zavala-Flores must identify a forfeited error that is clear or obvious and that affects his substantial rights. *See Puckett v. United States*, 129 S. Ct. 1423, 1429 (2009). Whether the convictions at issue are crimes of violence within the meaning of § 4A1.1(f) is an issue of first impression in this circuit. Thus, if error occurred, it was not clear or obvious and does not warrant relief on plain error review. *See United States v. Ellis*, 564 F.3d 370, 376-78 (5th Cir.), *cert. denied*, 130 S. Ct. 371 (2009); *Puckett*, 129 S. Ct. at 1429.

AFFIRMED.