

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

United States Court of Appeals
Fifth Circuit

FILED

March 29, 2013

Lyle W. Cayce
Clerk

No. 11-41267

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN ANTONIO LOPEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:11-CR-634-1

Before SMITH, PRADO, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Juan Antonio Lopez pleaded guilty to possession with intent to distribute marijuana and illegal reentry. Lopez was sentenced to two concurrent 50-month terms of imprisonment to be followed by a four-year term of supervised release on the drug possession count. Lopez filed a timely notice of appeal.

For the first time on appeal, Lopez argues that his sentence was improperly enhanced under U.S.S.G. § 2L1.2(b)(1)(A)(i) based on his prior federal conviction for conspiracy to possess with intent to distribute marijuana.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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He maintains that his prior conspiracy conviction under 21 U.S.C. § 846 did not require any overt act, that it thus is not a conspiracy within the generic, contemporary meaning of the word, and that it cannot support the enhancement.

We review Lopez's arguments only for plain error. *See United States v. Rodriguez-Escareno*, 700 F.3d 751, 753 (5th Cir. 2012). The prior conviction used to support the enhancement in this case was based on 21 U.S.C. §§ 846 and 841. In considering whether a prior federal conviction for conspiracy to commit a drug trafficking offense will justify an enhancement under § 2L1.2(b)(1)(A)(i), we need look no further than the federal Sentencing Guidelines. *Id.* at 753-54. The "Guidelines themselves, reasonably interpreted," support the enhancement. *Id.* at 754. Accordingly, the district court in this case did not err in applying the enhancement. *Id.* at 754-55.

AFFIRMED.