

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

United States Court of Appeals
Fifth Circuit

FILED

May 29, 2013

Lyle W. Cayce
Clerk

No. 12-40640

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOEL DUNCAN-MARTINEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:10-CR-697-1

Before STEWART, Chief Judge, and OWEN and GRAVES, Circuit Judges.

PER CURIAM:*

Joel Duncan-Martinez (Duncan) pleaded guilty to conspiracy to possess with the intent to distribute 100 kilograms or more of marijuana. He was deemed a career offender and, after a downward departure, was sentenced to 98 months in prison and three years of supervised release.

Duncan is not entitled to relief on appeal. The district court did not plainly err in applying the career offender enhancement as the state court charging documents for Duncan's 1998 and 2003 convictions reveal that Duncan

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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violated the state statute within the relevant definition of a controlled substance offense for purposes of the career offender enhancement. *See* U.S.S.G. § 4B1.2(b); *United States v. Roberts*, 255 F. App'x 849, 851 (5th Cir. 2007). Additionally, the district court's denial of a mitigating role adjustment was not clearly erroneous because Duncan's roles, such as being a contact person, recruiting his son to assist him, and stealing the marijuana that he intended to sell, were essential, not peripheral, to the overall scheme underlying the instant offense of conviction. *United States v. Villanueva*, 408 F.3d 193, 203 & n.9 (5th Cir. 2005).

AFFIRMED.