

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

United States Court of Appeals
Fifth Circuit

FILED

June 18, 2013

Lyle W. Cayce
Clerk

No. 12-40896
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALFONSO MONIET-WONG, also known as Hector Huerta,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:11-CR-968-1

Before JONES, OWEN, and GRAVES, Circuit Judges.

PER CURIAM:*

Alfonso Moniet-Wong pleaded guilty to illegal reentry and was sentenced to 52 months of imprisonment and three-years of supervised release. In calculating his guidelines range of imprisonment, the district court applied a 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(i) for Moniet-Wong's prior conviction of conspiracy to distribute marijuana.

As he did in the district court, Moniet-Wong argues that his prior conspiracy conviction under 21 U.S.C. § 846 did not require any overt act; it is

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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thus not a conspiracy within the generic, contemporary meaning of the word, and it cannot support the enhancement. Moniet-Wong correctly concedes that his argument is foreclosed by *United States v. Rodriguez-Escareno*, 700 F.3d 751, 753-54 (5th Cir. 2012), *cert. denied*, 133 S. Ct. 2044 (2013), but he raises it to preserve it for further possible review.

AFFIRMED.