

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED
May 30, 2013

No. 12-41085
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

ALBERTO ROCHA-MARTINEZ,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-396-1

Before REAVLEY, JOLLY, and DAVIS, Circuit Judges.

PER CURIAM:*

Raising two claims of error that he concedes are foreclosed, Alberto Rocha-Martinez appeals the 84-month sentence imposed following his guilty plea conviction for illegal reentry of a deported alien. The Government has filed an unopposed motion for summary affirmance or, in the alternative, for an extension of time to file a brief.

In his first claim, Rocha-Martinez contends that the district court erred by assessing a 16-level “drug trafficking” enhancement under United States

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Sentencing Guideline § 2L1.2(b)(1)(A)(i), based on his prior federal conviction for conspiracy to possess marijuana with intent to distribute. He argues that a conspiracy conviction such as his prior conviction, which has been obtained pursuant to 21 U.S.C. § 846, does not require proof of an overt act and thus does not meet the generic, contemporary definition of conspiracy for purposes of applying the § 2L1.2(b)(1)(A)(i) enhancement. As the parties concede, this issue is foreclosed by *United States v. Rodriguez-Escareno*, 700 F.3d 751, 753-55 (5th Cir. 2012), *cert. denied*, 2013 WL 1313840 (Apr. 29, 2013) (No. 12-9483).

In his second claim, Rocha-Martinez contends that the district court erred in not awarding an additional one-level reduction of his offense level for acceptance of responsibility under United States Sentencing Guideline § 3E1.1(b) when the Government declined to move for the reduction after he refused to sign a plea agreement containing an appeal waiver. As the parties concede, this issue is likewise foreclosed. *See United States v. Newson*, 515 F.3d 374, 376-79 (5th Cir. 2008).

In light of the foregoing, the Government's motion for summary affirmance is GRANTED, its alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.