

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

United States Court of Appeals  
Fifth Circuit

**FILED**

June 24, 2013

Lyle W. Cayce  
Clerk

\_\_\_\_\_  
No. 12-41242

Summary Calendar  
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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

PABLO SIERRA-PESINA,

Defendant-Appellant.

\_\_\_\_\_  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 1:12-CR-184-1  
\_\_\_\_\_

Before HIGGINBOTHAM, OWEN, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Pablo Sierra-Pesina appeals the 60-month sentence imposed following his guilty-plea conviction for being unlawfully present in the United States after having previously been deported subsequent to an aggravated felony conviction. He argues that the district court erred in characterizing his prior conviction for conspiracy to possess with intent to distribute marijuana as a drug trafficking offense and increasing his offense level by 16 additional points pursuant to U.S.S.G. § 2L1.2(b)(1)(A)(i).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Sierra-Pesina concedes that his argument that his conspiracy conviction was not a drug trafficking offense because, unlike the Model Penal Code, the federal conspiracy statute, 21 U.S.C. § 846, does not require an overt act, is foreclosed by *United States v. Rodriguez-Escareno*, 700 F.3d 751 (5th Cir. 2012). In *Rodriguez-Escareno*, we concluded that a reasonable interpretation of the Guidelines provides that conspiring to commit a federal drug trafficking offense qualifies for the § 2L1.2(b)(1)(A)(i) enhancement. *Id.* at 753-54.

Accordingly, the Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED. The Government's alternative motion for an extension of time to file a brief is DENIED as unnecessary.