

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

United States Court of Appeals
Fifth Circuit

FILED

July 15, 2013

Lyle W. Cayce
Clerk

No. 12-41291

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

LUIS ALBERTO LUGO,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:11-CR-1162-1

Before BENAVIDES, HAYNES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Luis Alberto Lugo appeals the within-guidelines sentence imposed following his guilty plea conviction of possession with intent to distribute marijuana. Lugo does not argue that his 100 month sentence is substantively unreasonable, but argues only that the district court committed procedural error and incorrectly calculated the applicable guidelines range by imposing a

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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two-level enhancement pursuant to U.S.S.G. §3B1.1(c). *See Gall v. United States*, 552 U.S. 38, 51 (2007).

Whether a defendant was a leader or organizer under § 3B1.1 is a factual determination that we review for clear error. *United States v. Villanueva*, 408 F.3d 193, 204 (5th Cir. 2005). Given the record evidence that Lugo paid his cousin to act as a scout for Lugo's criminal activities, we cannot say that the district court clearly erred. *See id.*; *United States v. Turner*, 319 F.3d 716, 725 (5th Cir. 2003) ("When the evidence demonstrates that a defendant directed another in his drug trafficking activities . . . sentence enhancement under § 3B1.1(c) is appropriate.")

AFFIRMED.