

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

No. 13-40279
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

July 15, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE LUIS RUEDA-CASTANEDA, also known as Jose Luis Rueda
Castaneda,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:12-CR-689-1

**ON REMAND FROM
THE SUPREME COURT OF THE UNITED STATES**

Before REAVLEY, JONES, and PRADO, Circuit Judges.

PER CURIAM:*

Jose Luis Rueda-Castaneda (Rueda) received a within-Guidelines 46-month sentence following his guilty plea conviction for attempted illegal reentry.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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This Court previously affirmed the sentence of Rueda because *United States v. Newson*, 515 F.3d 374, 376-79 (5th Cir. 2008), held that a district court may not award a reduction pursuant to U.S.S.G. § 3E1.1(b) absent a motion from the Government and that “[a] defendant’s refusal to waive his right to appeal is a proper basis for the Government to decline to make such a motion.” However, Amendment 775 to the U.S.S.G., made effective November 1, 2013, provides that “[t]he government should not withhold . . . a motion [under Section 3E1.1(b)] based on interests not identified in § 3E1.1, such as whether the defendant agrees to waive his or her right to appeal.” In *United States v. Palacios*, ___ F.3d ___, 2014 WL 2119096 n. 1 (5th Cir. May 21, 2014), the Court en banc concluded that *Newson*, “to the extent it may constrain us from applying Amendment 775 to cases pending on direct appeal under our rule of orderliness,” is abrogated in light of Amendment 775.

The Supreme Court granted certiorari, vacated, and remanded the instant case for further consideration in light of the position asserted by the Solicitor General in his brief for the United States filed on April 8, 2014. We, therefore, VACATE the judgment of sentence and remand for further proceedings in accord herewith.