

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

No. 13-40985
Conference Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 17, 2014

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN CARLOS ROBINSON-JESUS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:13-CR-603-1

Before KING, HAYNES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Juan Carlos Robinson-Jesus appeals his 41-month sentence for illegal presence in the United States following deportation. He challenges the 16-level enhancement under U.S.S.G. § 2L1.2(b)(1)(A)(ii) imposed for his prior conviction for statutory rape under Tennessee Code Annotated § 39-13-506(b). According to Robinson-Jesus, the district court erred by applying the enhancement because § 39-13-506 criminalizes sexual intercourse with

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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someone under the age of 18 whereas the generic, contemporary definition of “statutory rape”--as it is defined by the Model Penal Code and the laws of various states--prohibits intercourse with someone under the age of 16. The Government has filed an unopposed motion for summary affirmance.

In *United States v. Rodriguez*, 711 F.3d 541, 544 (5th Cir.) (en banc), *cert. denied*, 134 S. Ct. 512 (2013), we held that a “plain-meaning approach” applies to the determination of the “generic, contemporary” meaning of statutory rape under § 2L1.2(b)(1)(A)(ii). Under this approach, the court looks to the age of consent as it is “defined by statute in the jurisdiction where the prior conviction was obtained” instead of conducting the “cumbersome” survey of state codes, the Model Penal Code, federal law, and treatises that Robinson-Jesus urges. *See id.*

Robinson-Jesus concedes that the issue is foreclosed by *Rodriguez* and raises it merely to preserve it for further review. 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.