

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

United States Court of Appeals
Fifth Circuit

FILED

June 24, 2009

No. 08-40773
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

v.

MOISES ARON RODRIGUEZ-FUNEZ,

Defendant–Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:07-CR-1307-1

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Moises Aron Rodriguez-Funez was convicted of one count of illegal reentry into the United States and was sentenced to serve 37 months in prison. Rodriguez-Funez appeals his sentence. He argues that he should be resentenced because the district court erroneously believed that his prior conviction was for an aggravated felony. He concedes that this claim is reviewed for plain error only due to his failure to raise it in the district court.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 08-40773

A review of the record shows that the same sentence could be imposed upon Rodriguez-Funez if this case were remanded for resentencing. This review likewise does not show that it is reasonably probable that Rodriguez-Funez would have received a different sentence but for the district court's erroneous belief concerning his prior conviction. Consequently, Rodriguez-Funez has not shown plain error in connection with his sentence, nor has he established that he should receive relief on this claim. *See Puckett v. United States*, 129 S. Ct. 1423, 1429 (2009); *United States v. Jones*, 444 F.3d 430, 437-38 (5th Cir. 2006). The judgment of the district court is AFFIRMED.