

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

United States Court of Appeals
Fifth Circuit

FILED

August 18, 2009

No. 08-41071

Conference Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CELESTINO RIVERA-CASTANEDA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:08-CR-383-ALL

Before HIGGINBOTHAM, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

Celestino Rivera-Castaneda (Rivera) appeals the 70-month sentence imposed following his guilty plea to illegal reentry following a previous deportation. He contends that the district court reversibly erred in applying the U.S.S.G. § 2L1.2 enhancement to his sentence based upon his prior Texas conviction for indecency with a child-contact, a violation of Texas Penal Code § 21.11(a)(1). He asserts that a violation of § 21.11(a)(1) does not constitute the

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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enumerated offense of sexual abuse of a minor for purposes of the § 2L1.2 enhancement.

As Rivera acknowledges, this court has already addressed the issue of whether a prior Texas conviction for indecency with a child, a violation of § 21.11(a)(1), constitutes sexual abuse of a minor for purposes of § 2L1.2(b)(1)(A)(ii). *See United States v. Ayala*, 542 F.3d 494, 495 (5th Cir. 2008), *cert. denied*, 129 S. Ct. 1388 (2009); *United States v. Najera-Najera*, 519 F.3d 509, 511-12 (5th Cir.), *cert. denied*, 129 S. Ct. 139 (2008); *United States v. Zavala-Sustaita*, 214 F.3d 601, 604 (5th Cir. 2000). Because Rivera's only argument on appeal is foreclosed by this court's precedent, the judgment of the district court is AFFIRMED.