

OCT 14 2004

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ALEJANDRO GARCIA-PLANCARTE,

Defendant - Appellant.

No. 04-30095

D.C. No. CR-03-30052-MRH

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, Chief District Judge, Presiding

Argued and Submitted October 4, 2004
Seattle, Washington

Before: KOZINSKI, FERNANDEZ, and CLIFTON, Circuit Judges.

We have repeatedly held that a state drug conviction for simple possession can constitute an "aggravated felony" within the meaning of § 2L1.2, so long as that conviction satisfies the two-pronged "aggravated felony" definition. See, e.g.,

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

United States v. Rios-Beltran, 361 F.3d 1204, 1207 (9th Cir. 2004). Because the 2003 amendments to § 2L1.2's Application Notes did not change the manner in which "aggravated felony" is defined, this prior case law remains valid.

Defendant's conviction under California law for possession of methamphetamine satisfies the two-pronged "aggravated felony" definition because the offense 1) is punishable under the Controlled Substances Act, and 2) qualifies as a "felony" because it is punishable under California law by imprisonment exceeding one year. See id.; United States v. Ballesteros-Ruiz, 319 F.3d 1101, 1003 (9th Cir. 2003).

Our decision in United States v. Quintana-Quintana, No. 03-50254, 2004 WL 2047358, at *1 (9th Cir. Sept. 13, 2004), forecloses Defendant's argument based on Blakely v. Washington, 124 S.Ct. 2531 (2004).

AFFIRMED.