

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

No. 18-40725
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 28, 2019

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE ARMANDO BAZAN,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:16-CR-1376-4

Before SMITH, WIENER, and WILLETT, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Jose Armando Bazan appeals the 24-month sentence imposed in connection with his conviction for conspiracy to possess with the intent to distribute 500 grams or more of cocaine. For the first time on appeal, Bazan contends that the district court plainly erred in failing to award an offense level reduction under U.S.S.G. § 3B1.2 for having a mitigating role in the offense.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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Whether Bazan was a minor or minimal participant under § 3B1.2 is a factual determination. *See United States v. Villanueva*, 408 F.3d 193, 203 (5th Cir. 2005). Because this issue was a question of fact capable of resolution at sentencing, the issue “can never constitute plain error.” *United States v. Fierro*, 38 F.3d 761, 774 (5th Cir. 1994).

Accordingly, the judgment of the district court is AFFIRMED.