

December 14, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-51203
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DOMINGO SUNNY EREDIA

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:00-CR-457-2

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:*

Domingo Sunny Eredia appeals the sentence imposed following the revocation of his supervised release imposed following his guilty-plea conviction for conspiracy to possess with intent to distribute 50 grams or more of cocaine base. For the first time on appeal, Eredia argues that the district court plainly erred by not allowing him to allocute.

The district court plainly erred by not unequivocally communicating to Eredia that he had the right to offer any information of any mitigating circumstances he wished prior to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the pronouncement of sentence. See United States v. Magwood, 445 F.3d 826, 829 (5th Cir. 2006). However, because Eredia has not shown any objective basis that would have moved the district court to impose a lower sentence, no miscarriage of justice occurred, and we will not exercise our discretion to correct this error. See id. at 830.

AFFIRMED.