

May 31, 2005

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-51113  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EUDELIO RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. DR-02-CR-650-3-AML  
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Before REAVLEY, JOLLY, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:\*

Eudelio Rodriguez appeals from his sentence for conspiracy to possess marijuana with intent to distribute, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Rodriguez asserts that his waiver of appeal is invalid because the Government violated the plea agreement. This court reviews de novo whether a waiver of appeal bars an appeal. United States v. Baymon, 312 F.3d 725, 727 (5th Cir. 2002).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Rodriguez contends that the Government violated its agreement by supporting the probation officer's recommendation to deny him credit for acceptance of responsibility under U.S.S.G. 3E1.1(a). This lacks merit because the record shows that the Government promised not to oppose the adjustment only if the probation officer recommended it in the presentence report. At Rodriguez's sentencing hearing, this was made clear. Thus Rodriguez's reliance on United States v. Keresztury, 293 F.3d 750, 755-57 (5th Cir. 2002), is misplaced.

The record shows that Rodriguez knowingly and voluntarily waived his right to appeal his sentence. See United States v. Portillo, 18 F.3d 290, 292-93 (5th Cir. 1994); see also United States v. Dees, 125 F.3d 261, 269 (5th Cir. 1997). Accordingly, Rodriguez's waiver of appeal is enforceable and bars the present appeal.

APPEAL DISMISSED.