

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40258
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GILBERT MELGAR, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-00-CR-441-2

December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Gilbert Melgar, Jr., appeals from his sentence for possession with intent to distribute over 1,000 kilograms of marijuana. Melgar contends that the district court failed to consider his motion for downward departure pursuant to U.S.S.G. § 5K2.12 (Coercion and Duress).

At sentencing, the district court questioned a DEA agent about Melgar's allegation of coercion but indicated it was unconvinced that coercion or duress had been shown. This inquiry demonstrates that the motion was considered and that the court

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

did not mistakenly believe that it could not grant a motion for downward departure on that basis. The district court simply concluded that a departure on this basis was not warranted, and therefore we lack jurisdiction to consider the appeal. See United States v. Landerman, 167 F.3d 895, 899 (5th Cir. 1999).

APPEAL DISMISSED.