

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40944
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMIE ADAN VILLAPANDO-GONZALEZ,
also known as Jaime Adan Villalpando-Gonzalez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-01-CR-94-ALL

August 20, 2002

Before HIGGINBOTHAM, DAVIS, and PARKER, Circuit Judges.

PER CURIAM:*

Jaime Adan Villapando-Gonzalez was convicted for violating 8 U.S.C. § 1326(a), and has appealed his sentence. Villapando contends that the district court erred by refusing to depart downward under U.S.S.G. § 5K2.0, on the ground that his criminal history score overrepresented the seriousness of his criminal conduct. It is clear from the district court's statements at the sentencing hearing that it did not misapprehend whether it had

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 authority to depart. Instead, it determined that a departure was not warranted under the facts of this case. Because this court does not have jurisdiction to review that determination, see United States v. Thames, 214 F.3d 608, 612 (5th Cir. 2000), the appeal must be dismissed.

APPEAL DISMISSED.