

FILED

March 10, 2004

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 01 - 51274
SUMMARY CALENDAR

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

RIGOBERTO TOSCANO, also known as Rigo,

Defendant - Appellant

On Appeal from the United States District Court for the
Western District of Texas
(SA-00-CR-605-4)

Before REYNALDO G. GARZA, DAVIS, and BARKSDALE, Circuit Judges.

PER CURIAM.¹

Roberto Toscano challenges the factual basis for his guilty plea to one count of conspiracy to distribute in excess of 1,000 kilograms of marijuana. There is, however, no nonfrivolous issue for appeal with respect to Toscano's conviction because as part of his written plea agreement, Toscano validly waived his right to directly appeal his sentence. *See United States v. Portillo*, 18 F.3d 290, 292 (5th Cir. 1994). Accordingly, the appeal is dismissed.

¹Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.