

January 28, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-51201
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VALENTE SILLERO-GALINDO,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-02-CR-127-1-SS

Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:*

Valente Sillero-Galindo (Sillero) appeals his sentence for conspiring to smuggle illegal aliens and money laundering. He asserts that the district court erred in imposing a two-level adjustment for obstruction of justice based upon his flight and his possession of false identification at the time of his arrest. The record reflects that Sillero freely and voluntarily waived his right to appeal his sentence, except for an upward departure or claims of ineffective assistance and prosecutorial misconduct.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Sillero's challenge to the upward adjustment is not an upward departure. See United States v. Gaitan, 171 F.3d 222, 223-24 (5th Cir. 1999).

Because Sillero's waiver of the right to appeal his sentence is unambiguous and enforceable, the appeal is DISMISSED for lack of jurisdiction. See United States v. Martinez, 263 F.3d 436, 438 (5th Cir. 2001).

APPEAL DISMISSED.