

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40973
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARY SCHMUECKLE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
(96-CR-115-1)

- - - - -
April 2, 1997

Before Wisdom, Jolly, and Benavides, Circuit Judges.

PER CURIAM:*

Gary Schmueckle appeals his conviction for conspiracy to possess with intent to distribute methamphetamine. Schmueckle argues that the district court erred in its calculation of the drug amount attributable to him for sentencing purposes and that the Government breached the plea agreement by failing to move for downward departure at sentencing. We have reviewed the record and the briefs of the parties and conclude that the district court did not commit plain error in its calculation of the drug

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

amount attributable to Schmueckle.² We also conclude that the Government retained discretion to move for downward departure and did not breach the plea agreement by failing to do so.³

AFFIRMED.

² See § 2D1.1, Note (A) & comment. n.12; see also United States v. Sherrod, 964 F.2d 1501, 1508 (5th Cir.), cert. denied, 506 U.S. 1041 (1992).

³ See United States v. Price, 95 F.3d 364, 368-69 (5th Cir. 1996).