

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40509
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN MANUEL MACHADO-CARRIZALES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
UDC No. L-96-CR-135-1
- - - - -

April 02, 1998

Before JONES, SMITH, and STEWART, Circuit Judges.

PER CURIAM:*

Juan Manuel Machado-Carrizales appeal his guilty-plea conviction to possession with intent to distribute approximately 377 pounds of marihuana and carrying a firearm during and in relation to a drug-trafficking crime. He contends that the district court failed to give him an opportunity to plead not guilty pursuant to Fed. R. Crim. P. 11(e)(4) when it was unlikely that the district court would follow the sentencing recommendation in the plea agreement.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 precepts of Rule 11(e)(4) do not apply to Machado-Carrizales' plea agreement, which was entered into pursuant to Rule 11(e)(1)(B). United States v. Babineau, 795 F.2d 518, 520 (5th Cir. 1986). This issue is without any arguable merit. The appeal is frivolous and is DISMISSED as such. See 5th Cir. R. 42.2.

APPEAL DISMISSED.