

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40563
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OSCAR RAMIREZ PENA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-97-CR-336-1
- - - - -

April 16, 1999

Before JONES, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:*

Oscar Ramirez Pena appeals his guilty-plea conviction for possession with the intent to deliver over 900 pounds of cocaine. Pena argues for the first time on appeal that the Government breached the plea agreement because he was denied application of the safety-valve provision of U.S.S.G. § 5C1.2. Pena also contends that the district court erred by not assessing him a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

mitigating role in the offense; however, he provides no legal argument in support of his bare assertion of error.

We have reviewed the record and the briefs of the parties and conclude that Pena's argument concerning the Government's alleged breach of the plea agreement does not amount to plain error. See United States v. Calverley, 37 F.3d 160, 162-63 (5th Cir. 1994)(en banc). Furthermore, the district court did not err in refusing to apply the safety-valve provision. See United States v. Wilson, 105 F.3d 219, 222 (5th Cir.), cert. denied, 118 S. Ct. 133 (1997). Pena's argument concerning his mitigating role is deemed abandoned on appeal. See United States v. Tomblin, 46 F.3d 1369, 1376 n.1 (5th Cir. 1995). The judgment of the district court is AFFIRMED.