

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 99-40635  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARTURO AMADOR,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. M-98-CR-490-ALL  
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February 17, 2000

Before EMILIO M. GARZA, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:\*

Arturo Amador appeals his guilty-plea conviction for possession with intent to distribute heroin. He argues that the district court erred in denying his request for a downward departure on the basis that his criminal history category overrepresented the seriousness of his past criminal conduct.

This court has jurisdiction to review the district court's refusal to depart downward because the court mistakenly believed that it was bound to follow the guidelines and that the guidelines did not permit a downward departure in this circumstance. United States v. Harrison, 918 F.2d 30, 31 (5th

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\* Pursuant to 5<sup>TH</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

Cir. 1990).

Nevertheless, this court must affirm the district court's refusal to depart downward because Amador failed to state in the district court and on appeal what portion of his criminal history was overrepresented. The judgment of the district court is AFFIRMED.