

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-51075
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EULALIO DIAZ NIETO,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-99-CR-100-1-SS

October 25, 2001

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Eulalio Diaz Nieto appeals his sentence for possession with intent to distribute cocaine. Nieto knowingly and voluntarily waived his right to appeal his sentence. See United States v. Melancon, 972 F.2d 566, 567 (5th Cir. 1992); United States v. Portillo, 18 F.3d 290, 292 (5th Cir. 1994). Because Nieto's sentence did not represent an upward departure from the applicable Sentencing Guidelines range, Nieto's appeal is foreclosed by the waiver. This appeal is DISMISSED.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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