

**FILED**

August 18, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 03-41730  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SIMON GARZA,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. M-03-CR-662-1  
-----

Before HIGGINBOTHAM, DAVIS, and PICKERING, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Simon Garza concedes that the arguments raised relating to 21 U.S.C. §§ 841 and 846 are foreclosed by circuit precedent but seeks to preserve them for further review. Garza also requests that this court remand the case to the district court for the limited purpose of correcting the judgment under FED. R. CRIM. P. 36 to reflect that Garza pleaded guilty to count two of the indictment and that the

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court granted the Government's motion to dismiss count one of the indictment.

The Government has moved for summary affirmance in lieu of filing an appellee's brief. The Government also joins in Garza's request that we remand the case to the district court for the limited purpose of correcting the judgment as noted above. The Government's motion for summary affirmance is GRANTED, and the decision of the district court is AFFIRMED. We also REMAND to the district court with an instruction to correct the judgment pursuant to FED. R. CRIM. P. 36 to reflect that Garza pleaded guilty to count two of the indictment and that the district court granted the Government's motion to dismiss count one of the indictment.

MOTION GRANTED; AFFIRMED and REMANDED with instruction.