

FILED

December 16, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-20095
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARMANDO POPOCA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:02-CR-715-7

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Armando Popoca appeals the sentence imposed following his guilty-plea conviction for conspiracy to transport and harbor unlawful aliens for purposes of commercial advantage and private gain in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I) and (II). He argues that his sentence should be vacated in view of Blakely v. Washington, 124 S. Ct. 2531 (2004). As part of his plea agreement, Popoca waived the right to appeal his sentence "except . . . a sentence imposed above the statutory maximum and an

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

upward departure from the sentencing guidelines not requested by the United States." At the arraignment hearing, the district court expressly advised Popoca of the waiver provision, and Popoca stated that he understood and did not express confusion or ask any questions concerning the waiver provision. Therefore, Popoca knowingly and voluntarily waived the right to appeal his sentence, and the waiver is valid and enforceable. See United States v. Robinson, 187 F.3d 516, 517 (5th Cir. 1999). Even if Popoca's Blakely claim is not precluded by the waiver provision, the issue is foreclosed by this court's decision in United States v. Pineiro, 377 F.3d 464, 465-66 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004)(No. 04-5263).

AFFIRMED.