

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

February 12, 2009

Charles R. Fulbruge III
Clerk

No. 08-50392
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

TRINI LOPEZ ESPINOZA

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:07-CR-16-1

Before WIENER, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

Trini Lopez Espinoza was convicted of conspiracy to distribute at least five kilograms of cocaine. He was sentenced to life in prison and a five-year term of supervised release.

The district court's calculation of the applicable advisory guidelines sentencing range was based on its determination that Espinoza had a base offense level of 38. That base offense level was chosen based on the district

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

court's finding that, for purposes of U.S.S.G. § 2D1.1, Espinoza was accountable for more than 150 kilograms of cocaine.

Espinoza argues on appeal that the district court's drug quantity determination was clearly erroneous. He maintains that the district court relied on information from witness Gabriel Hernandez that was materially untrue. Even if we discount the portion of Hernandez's testimony that is contested by Espinoza, the district court's factual finding that Espinoza was accountable for more than 150 kilograms of cocaine is plausible in light of the whole record. See *United States v. Cisneros-Gutierrez*, 523 F.3d 751, 764 (5th Cir. 2008). Accordingly, that finding is not clearly erroneous. *Id.*

AFFIRMED.