

November 7, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-20871
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS GALINDO-SAUCEDO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(4:02-CR-379-1)

Before SMITH, WIENER, and OWEN, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Jesus Galindo-Saucedo appeals his 212-month sentence imposed following his guilty-plea conviction for conspiracy to distribute five kilograms or more of cocaine. Galindo argues that his sentence should be vacated and the case remanded for resentencing before a different judge because the government breached the plea agreement by failing to recommend a sentence at the low end of the applicable guideline range at the sentencing hearing.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Under the terms of the plea agreement, the government was required to recommend that Galindo receive a sentence at the low end of the applicable Guideline range if Galindo complied "fully with all the terms of this plea agreement, specifically including his successful efforts to earn a substantial assistance downward departure as set out herein." Galindo did not successfully earn a substantial-assistance downward departure as plainly required under the terms of the plea agreement, and he conceded as much at sentencing. Thus, the government's failure to make the recommendation was not error, plain or otherwise. See United States v. Reeves, 255 F.3d 208, 210 (5th Cir. 2001); United States v. Olano, 507 U.S. 725, 732 (1993).

AFFIRMED.