

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20718
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCIALES PENA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-25-1

February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Marciales Pena appeals his guilty-plea conviction for aiding and abetting the possession with intent to distribute more than 500 grams of cocaine, in violation of 21 U.S.C.

§§ 841(b)(1)(b)(ii) and 18 U.S.C. § 2. He argues that the district court erred in denying his motion for a downward departure based on his status as a deportable alien. Because the record indicates that the district court recognized its authority to depart downward based on Pena's status as a deportable alien but determined that a downward departure was not warranted based on the facts of the case, we lack jurisdiction to review 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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's decision. See United States v. Brace, 145 F.3d 247, 263 (5th Cir. 1998)(en banc).

APPEAL DISMISSED.