

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50219
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAYMOND CARSAREZ HERRERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-01-CR-425-ALL

October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Raymond Carsarez Herrera appeals the sentence he received following his guilty plea conviction for distributing cocaine. He argues that he was improperly sentenced as a career offender under U.S.S.G. § 4B1.1. Specifically, he contends that the career-offender enhancement was error because his prior convictions for using a telephone to facilitate drug offenses, in violation of 21 U.S.C. § 843, did not qualify as predicate offenses for purposes of § 4B1.1 and that, to the extent 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

Sentencing Commission authorizes the enhancement based on such convictions, it has exceeded its authority.

As Herrera concedes, his argument is foreclosed. See United States v. Lightbourn, 115 F.3d 291, 293 & n.5 (5th Cir. 1997); see also U.S.S.G. § 4B1.1 & comment. (background); U.S.S.G. § 4B1.2, comment. (n.1). He raises the issue to preserve it for possible Supreme Court review. The district court's judgment is AFFIRMED.