

April 23, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-50885
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANTONIO RODRIGUEZ RAMIREZ, also known as
Antonio Ramirez Rodriguez,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-01-CR-601-ALL-FB

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Antonio Rodriguez Ramirez (Ramirez) appeals his guilty-plea conviction for possession with intent to distribute more than five kilograms of cocaine, in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(A). Ramirez contends, for the first time on appeal, that his guilty plea was unknowing and involuntary because the district court erroneously advised him during the plea colloquy that he would not be eligible for a safety-valve reduction from

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the mandatory-minimum ten-year sentence if he elected to go to trial instead of pleading guilty. Ramirez also moves to strike a portion of the Government's brief. That motion is DENIED.

The record as a whole supports a determination that the district court's error in conducting the FED. R. CRIM. P. 11 plea colloquy affected Ramirez' substantial rights. See United States v. Vonn, 535 U.S. 55, 122 S. Ct. 1043, 1046 (2002); United States v. Guerra, 94 F.3d 989, 995 (5th Cir. 1996) (§ 2255 case). Under the circumstances presented, it is appropriate to exercise our discretion to correct the plain error. See Vonn, 122 S. Ct. at 1048.

The judgment of conviction is VACATED and this case is REMANDED to allow Ramirez to enter a new plea.

MOTION DENIED; VACATED AND REMANDED FOR FURTHER PROCEEDINGS.