

FILED

October 20, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41106
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERNESTO ALVARADO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:03-CR-58-2

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:*

Ernesto Alvarado appeals his sentence following a guilty plea to possession with intent to distribute cocaine. See 21 U.S.C. § 841(a)(1), (b)(1)(A). Alvarado challenges the district court's finding that he did not meet the requirement of the "safety valve" provision, U.S.S.G. § 5C1.2(a)(5), that he truthfully provide the Government with all information and evidence he had concerning the offense. Because Alvarado was found not credible, the district court did not err in finding

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that Alvarado did not meet the safety valve criteria in U.S.S.G. § 5C1.2 which would qualify him for a two-level downward adjustment pursuant to U.S.S.G. § 2D1.1(b)(6). See United States v. Solis, 169 F.3d 224, 226 (5th Cir. 1999); United States v. Flanagan, 80 F.3d 143, 145-47 (5th Cir. 1996).

AFFIRMED.