

April 21, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-41166
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GILBERT GAYTAN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. M-03-CR-9-1

Before JOLLY, JONES, and SMITH, Circuit Judges.

PER CURIAM:*

Gilbert Gaytan appeals his guilty-plea conviction and sentence for importation of cocaine, a violation of 21 U.S.C. §§ 952(a) and 960. The district court sentenced Gaytan to 120 months in prison, the statutory mandatory minimum term, and five years of supervised release.

Gaytan contends that the district court abused its discretion in denying his second motion for a continuance of his sentencing hearing. Except for summarily asserting that he

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

needed more time to "allow [him] an opportunity to mitigate his sentence," Gaytan has cited no legal or factual basis upon which a departure or reduction below the mandatory minimum might have been warranted. Because he has not established prejudice, he has not demonstrated that the district court erred in denying him a continuance. See United States v. Peden, 891 F.2d 514, 518 (5th Cir. 1989).

The conviction and sentence are AFFIRMED.