

December 10, 2003

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-50441
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE ROBAINA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-01-CR-1558-9-EP

Before DAVIS, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:*

Jorge Robaina appeals his guilty-plea conviction for conspiracy to possess with intent to distribute 1000 or more kilograms of marijuana in violation of 21 U.S.C. §§ 841 and 846. Robaina argues that his guilty plea was unknowing and involuntary because the plea agreement promised that he would receive a sentence under the United States Sentencing Guidelines but the district court sentenced him to the statutory mandatory minimum sentence of ten years. Under U.S.S.G. § 5G1.1(b), if 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

statutorily mandated sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence. See United States v. Fitch, 137 F.3d 277, 278 (5th Cir. 1998). Robaina's plea agreement was not broken because he was sentenced to the mandatory minimum sentence. See U.S.S.G. § 5G1.1(b); Fitch, 137 F.3d at 278.

AFFIRMED.