

January 23, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-50555  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSE MARCELO FRIAS-RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. P-02-CR-354-ALL  
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Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Jose Marcelo Frias-Rodriguez appeals his sentence imposed following his guilty plea conviction for possession with intent to distribute less than 50 kilograms of marijuana. Frias was sentenced to a term of imprisonment of 18 months to be followed by a three-year term of supervised release.

This court must examine the basis of its jurisdiction on its own motion if necessary. See Mosley v. Cozby, 813 F.2d 659, 660

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. 1987). Although Frias' letter to the court indicated that he was seeking a reduction of his sentence, the other statements in his letter clearly evinced his intent to appeal his sentence. Therefore, the court has jurisdiction to address this appeal. See Stevens v. Heard, 674 F.2d 320, 322-23 (5th Cir. 1982).

Frias argues that the district court clearly erred in refusing his request to reduce his offense level for having a minor role in the offense. He argues that he was merely a courier transporting a relatively small amount of marijuana and that his consent to search his vehicle indicated that he was not a sophisticated drug smuggler.

A defendant's offense level may be decreased by two levels if the defendant was a minor participant in an offense. See U.S.S.G. § 3B1.2. A minor participant is one "who is less culpable than most other participants, but whose role could not be described as minimal." U.S.S.G. § 3B1.2, comment. (n.5). The district court did not clearly err in determining that Frias failed to show that there were any other participants in the offense and thus, that Frias failed to show that he was substantially less culpable than other involved individuals involved in the offense. United States v. Brown, 54 F.3d 234, 241 (5th Cir. 1995).

AFFIRMED.