

March 3, 2004

Charles R. Fulbruge III
Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 03-50630
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MAURICIO JOE HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(SA-94-CR-73-ALL)

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

PER CURIAM:*

Mauricio Joe Hernandez appeals the 24-month sentence imposed upon revocation of supervised release, which stemmed from his 1994 conviction for being a felon in possession of a firearm. (The revocation was based upon Hernandez' drug use and withdrawal from a drug treatment facility against the advice of the staff.) Hernandez contends that the district court violated FED. R. CRIM. P. 32(i)(3)(B) by failing to resolve a contested issue at sentencing: whether Hernandez would be eligible for intensive drug

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

treatment in prison in the light of his former gang affiliation, which could require his segregation from the regular prison population.

The parties dispute: whether FED. R. CRIM. P. 32 required the district court to make a finding on the availability of drug treatment; and whether Hernandez preserved this issue by objecting at sentencing. We need not resolve these contentions; even deciding them in the light most favorable to Hernandez, the sentence was proper. The sentencing transcript reflects that the district court implicitly determined that this issue would not affect sentencing. Hernandez has not demonstrated that the court imposed a sentence in violation of law or that the sentence was plainly unreasonable. See *United States v. Stiefel*, 207 F.3d 256, 259 (5th Cir. 2000).

AFFIRMED