

June 21, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-20761  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROQUE URDIALES GARCIA, also known as El Profe,  
also known as Roberto,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:89-CR-232-3  
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Before SMITH, GARZA and PRADO, Circuit Judges.

PER CURIAM:\*

Roque Urdiales Garcia appeals the district court's denial of his 18 U.S.C. § 3582(c)(2) motion for a reduction of sentence. Garcia contends that the district court abused its discretion by refusing to reduce his sentence pursuant to Amendment 591 (2000) to the Sentencing Guidelines. Garcia's motions for leave to address this court and for appointment of counsel are denied.

Garcia contends that Amendment 591 is designated for retroactive application and mandates the use of U.S.S.G. § 2D1.5

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(1987) to determine the offense level and the sentencing guidelines range for his continuing criminal enterprise conviction. Garcia asserts that in 1990, the sentencing court applied U.S.S.G. § 2D1.1 (1987) to determine his total offense level of 42 and his sentencing guidelines range of 360 months to life imprisonment. Garcia contends that under § 2D1.5 (1987), his offense level would be, at most, 38, and his sentencing guidelines range would be 235 to 293 months of imprisonment.

Garcia has not shown that the district court relied on an "incorrect view of the law" in denying his § 3582(c)(2) motion. United States v. Thompson, 130 F.3d 676, 683 (5th Cir. 1997). Accordingly, the district court did not abuse its discretion by denying Garcia's § 3582(c)(2) motion for a reduction of sentence. United States v. Gonzalez-Balderas, 105 F.3d 981, 982 (5th Cir. 1997). The judgment of the district court is AFFIRMED; all outstanding motions are DENIED.