

August 28, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-10313
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DOMINGO RIOS GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:05-CR-267-2

Before DAVIS, SMITH, and WIENER, Circuit Judges.

PER CURIAM:*

Domingo Rios Garcia pleaded guilty to one count of conspiring to possess with intent to distribute and to distribute a mixture and substance containing a detectable amount of cocaine. He appeals the 130-month sentence imposed by the district court.

Garcia argues that the district court erred by denying him a reduction in his offense level under U.S.S.G. § 3B1.2(b) for being a minor participant in the offense. He contends 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

was clearly less culpable than his co-defendant and that his conduct was not essential to the advancement of the delivery of cocaine. Garcia maintains that he made no decisions with respect to the cocaine transaction and was unaware of its scope, but rather was a mere one-time courier whose role was peripheral to the offense.

The record indicates that Garcia assisted in the acquisition of the vehicles used in the conspiracy and participated in the transportation of the cocaine to its destination. Because there was sufficient evidence to show that Garcia's role in the conspiracy was more than peripheral and that he was not substantially less culpable than the average participant, the district court did not clearly err in refusing a U.S.S.G. § 3B1.2 adjustment. See United States v. Villanueva, 408 F.3d 193, 203-04 (5th Cir.), cert. denied, 126 S. Ct. 268 (2005).

AFFIRMED.