

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 19, 2008

Charles R. Fulbruge III
Clerk

No. 07-50523
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

GERMAN ESTRADA

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:06-CR-163-ALL

Before WIENER, STEWART, and CLEMENT, Circuit Judges.

PER CURIAM:*

German Estrada appeals his 108-month sentence following his guilty plea to possession with intent to distribute more than 50 grams of methamphetamine. He argues that the district court clearly erred in determining the drug quantity attributed to him for sentencing purposes. Estrada contends that the district court erred in its conversion of the 223.3 grams of methamphetamine at 60% purity to the 133.92 grams of "methamphetamine (actual)." According to Estrada, his base offense level

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

should have been a level 28, using only the 223.3 grams of methamphetamine because there was no evidence that he knew the purity of the methamphetamine

Estrada stipulated in his plea agreement that the offense involved a net weight of 223.2 grams, with a purity of 60%, resulting in 133.92 grams of “methamphetamine (actual).” Thus, the district court’s finding as to the purity of the methamphetamine and its drug quantity determination as to “methamphetamine (actual)” under U.S.S.G. § 2D1.1(c)(4) was not clearly erroneous and was plausible in light of the record as a whole. See *United States v. Betancourt*, 422 F.3d 240, 246 (5th Cir. 2005). The judgment of the district court is AFFIRMED.