

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 27, 2014

Lyle W. Cayce
Clerk

No. 13-40531
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MICHAEL PENA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:12-CR-728-3

Before JOLLY, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Michael Pena appeals his 97-month sentence imposed following a jury trial conviction for conspiracy to possess with intent to distribute more than 100 kilograms of marijuana. Pena argues that the district court prevented him from arguing that he was entitled to a safety-valve adjustment and a minor-role adjustment. This argument is factually incorrect because the district court allowed him to make these arguments at the sentencing hearing. In any event,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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Pena has not shown that, given his admitted lies in court, the denials of the safety-valve adjustment and minor-role adjustment were clearly erroneous. *See United States v. Davis*, 76 F.3d 82, 84 (5th Cir. 1996). Accordingly, the judgment of the district court is AFFIRMED.