

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-2231
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

JORGE LOUIS JAIME QUINTANA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CR H 91 00071)

(November 24, 1992)

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Following his conviction on his guilty plea and his sentencing for conspiracy to possess with intent to distribute in excess of 5 kilograms of cocaine, Quintana appeals his sentence. We affirm.

Appellant objects on appeal to the four level increase in his base offense level for his aggravating role as an organizer of the criminal activity. He argues that the district court failed to make the findings required by Federal Rule of Criminal Procedure

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

32(c)(3)(D) because it did not determine that he was involved in negotiations to deliver marijuana, that such negotiations were part of the same scheme or course of conduct as the offense of conviction, and that he was capable of actually producing the additional contraband. Appellant admitted during the pre-sentence investigation that he discussed the 15,000 pound marijuana transaction with the agent. That was in the presentence report. The report also stated that Appellant and Gonzales initiated negotiations concerning future smuggling of three tons of cocaine into the United States. He did not object to that factual statement in the report. The district court stated for the record that it considered the report carefully and Appellant's objections thereto. That evidences the court's resolution of the disputed issues and complies with Rule 32. See U.S. v. Alfaro, 919 F.2d 962 (5th Cir. 1990); U.S. v. Ramirez, 963 F.2d 693 (5th Cir. 1992); U.S. v. Mir, 919 F.2d 940 (5th Cir. 1990).

Appellant also argues that the four level adjustment was error because the Government failed to prove that he supervised five participants in the offense. The pre-sentence report showed that Gonzales, Puentes, Martinez, Ochoa, and others were participants in the cocaine smuggling scheme. This fully supports the district court's finding. Mir, 919 F.2d at 945.

AFFIRMED.