

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-8238
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAFAEL DELGADO-MORALES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-91-CR-375
- - - - -
(January 6, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Rafael Delgado-Morales pleaded guilty to failure to appear and was sentenced to fifteen months' imprisonment. Delgado-Morales argues on appeal that his guilty plea was not knowing and voluntary because the district court did not advise him of the correct statutory maximum penalty. He contends that under 18 U.S.C. § 3146(b), the statutory maximum was imprisonment for not more than five years, and that the district court advised him that the maximum sentence he could receive was ten years.

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The district court informed Delgado-Morales that the statutory maximum was ten years. Section 3146(b)(1)(a)(i) provides that the punishment shall be imprisonment for not more than ten years if the person was released in connection with a charge for an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more. Delgado-Morales was charged with offenses for which the maximum term of imprisonment was 20 years. See 21 U.S.C. § 841(b)(1)(C). Section 3146 bases the punishment for failure to appear according to the statutory maximum penalty for the underlying offense. United States v. Harper, 932 F.2d 1073, 1077 (5th Cir.), cert. denied, 112 S.Ct. 443 (1991). "If the penalty provision of the underlying offense chosen permits the imposition of a fifteen-year term of imprisonment, § 3146(b)(1)(A) applies and a ten-year sentence can be imposed." United States v. Iddeen, 854 F.2d 52, 55 (5th Cir. 1988). The district court correctly informed him that the statutory maximum penalty he faced under § 3146 was ten years.

AFFIRMED.