UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-8561
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

ERBY LUJAN CARRASCO,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(MO-93-CR-41-2)

(February 25, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Convicted on his guilty plea of conspiracy to possess with intent to distribute a quantity of marijuana, Carrasco appeals his sentence complaining of the district court's denial of the Government's motion for downward departure. We affirm.

In the plea agreement, the Government agreed to recommend a two-point reduction for acceptance of responsibility, sentencing at the lower end of the guideline range, and to dismiss remaining

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

charges. At sentencing, the Government moved for downward departure based on Appellant's substantial cooperation, but the district court denied the motion and sentenced Appellant at the bottom of the guideline range after giving credit for acceptance of responsibility.

Generally, this Court "will not review a district court's refusal to depart from the Guidelines, unless the refusal was in violation of the law." United States v. Mitchell, 964 F.2d 454, 462 (5th Cir. 1992) (citations omitted). "As with any finding of fact, a district court's determination that a circumstance which might warrant departure does not exist is reviewed for clear error." United States v. Williams, 974 F.2d 25, 26 (5th Cir. 1992) (citation omitted), cert. denied, 113 S.Ct. 1320 (1993).

While the district court did not give explicit reasons for denying the Government's motion (and none are required), there was no error. The district court rewarded Appellant's cooperation by sentencing him at the bottom of the applicable guideline range. Although Appellant claims to have been a minimal or minor participant, the record makes clear that he was much involved in the arrangements to obtain the drug and to sell it to the undercover officer. The district court also correctly discounted Appellant's excuse that he needed money because of his mother's illness. Poverty is no excuse for crime.

Appellant's primary argument is that the court should have departed downward because his involvement in this crime was aberrant behavior. The district court correctly held otherwise

because the extent of Appellant's planning and involvement in the sale of the drugs showed that this was not some spontaneous and thoughtless act on his part. See United States v. Williams, 974 F.2d 25, 26-27 (5th Cir. 1992), cert. denied, 113 S. Ct. 1320 (1993). We are also unpersuaded by Appellant's reliance on cases from other circuits.

We note in passing that the plea agreement included a waiver of Appellant's right to appeal his sentence in exchange for the Government's promise to recommend reduction for acceptance of responsibility, recommend sentencing at the lower end of the guideline range and dismissal of the remaining counts. The Government complied with the conditions of the plea agreement, yet the Government makes no mention on appeal of this waiver, nor has the transcript of the plea hearing been included in the appellate record which precludes us from determining whether or not the waiver was informed and voluntary. The knowing and voluntary waiver in a plea agreement of the right to appeal has been approved by this Court. See United States v. Melancon, 972 F.2d 566, 567 (5th Cir. 1992); United States v. Baty, 980 F.2d 977 (5th Cir. 1992). We are at a loss to understand why the Government has not raised the issue in this case.

AFFIRMED.