

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8776
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HECTOR MARIO MARRUFO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. M-93-CR-50-1
- - - - -

(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, AND EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

A defendant may waive his right to appeal if his waiver is knowing and voluntary. *United States v. Melancon*, 972 F.2d 566, 567-68 (5th Cir. 1992). Additionally,

when the record of the Rule 11 hearing clearly indicates that a defendant has read and understands his plea agreement, and that he raised no question regarding a waiver-of-appeal provision, the defendant will be held to the bargain to which he agreed, regardless of whether the court specifically admonished him concerning the waiver of appeal.

United States v. Portillo, 18 F.3d 290, 293 (5th Cir. 1994).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Marrufo's plea agreement indicated in three separate provisions that he was waiving his right to appeal except in the event of a substantial upward departure. Marrufo answered affirmatively when asked if he agreed with the prosecutor's summary of the plea agreement and when the district judge asked him if he understood that he was waiving his right to appeal. Nothing in the record indicates that Marrufo's waiver was unknowing or involuntary. Marrufo does not contend that the waiver or his guilty plea was involuntary or unknowing. The district judge did not depart upward from the guideline range. Marrufo waived his right to appeal all issues other than an upward departure.

This appeal borders on being frivolous. We caution counsel. Counsel is subject to sanctions. Counsel has no duty to bring frivolous appeals; the opposite is true. See United States v. Burleson, ___ F.3d ___, (5th Cir. May 18, 1994, No. 93-2619).

APPEAL DISMISSED. See 5TH CIR. R. 42.2.