

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10625
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARNULFO NIÑO and
SEDRICK LAMAR PIERRE,

Defendant-Appellants.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
(USDC No. 3:93-CR-359-G)

- - - - -
November 16, 1995

Before WIENER, PARKER and DENNIS, Circuit Judges.

PER CURIAM:*

Arnulfo Niño and Sedrick Lamar Pierre appeal their convictions for conspiracy to possess with the intent to distribute over 5 kilograms of cocaine and four counts of using a communication devise in furtherance of the conspiracy. See 21 U.S.C. §§ 841(a), 843(b), 846. Niño also appeals his sentence.

Niño raises the following issues: 1) whether the district court erred in denying Niño's requests for the disclosure,

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

pursuant to Brady v. Maryland, 373 U.S. 83 (1963), of Bureau of Prisons' investigation reports; 2) whether a violation of Batson v. Kentucky, 476 U.S. 79 (1986), occurred by the Assistant U.S. Attorney's (AUSA's) use of peremptory strikes; 3) whether the evidence was sufficient to prove a conspiratorial agreement; 4) whether due process was violated by reference at trial to Niño's incarceration; 5) whether the district court abused its discretion in allowing Casey, the code-word expert, to give testimony beyond the area of his expertise; 6) whether prejudice ensued by the mention in the presentence report of Niño's purported affiliation with a prison gang; 7) whether the district court erred in determining the amount of cocaine for which Niño was held accountable; and 8) whether the district court erred by finding that Niño was a leader, manager, organizer, or supervisor under U.S.S.G. § 3B1.1(c).

Pierre raises the following issues: 1) whether the district court erred by denying Pierre's request for substitution of appointed counsel; 2) whether the district court abused its discretion by permitting two case agents to be exempted from the witness-exclusion rule, Fed. R. Evid. 615; and 3) whether reversible error occurred from the comment made by the AUSA during rebuttal argument.

After a careful review of the record, we conclude that no error occurred warranting vacation or reversal. Therefore, the convictions and sentences are

AFFIRMED.