

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50132
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GREGORIO FLORES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. 93-CR-98-3

- - - - -
(November 17, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Gregorio Flores pleaded guilty pursuant to a written plea agreement to one count of conspiracy to possess with intent to distribute more than 100 kilograms of marijuana in violation of 21 U.S.C. § 846. The district court sentenced Flores to 240 months imprisonment.

Flores argues on appeal that he received ineffective assistance of counsel because his attorney's misunderstanding of the applicable law concerning plea agreements caused him to erroneously advise Flores about the sentence that he believed the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

district court would impose. The Government contends that Flores waived the right to a direct appeal.

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). Flores does not argue that his waiver is invalid vis-a-vis a direct criminal appeal. The appeal is without arguable merit and thus frivolous. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. 5th Cir. R. 42.2. This ruling is without prejudice to Flores's right to raise this argument in a proper proceeding under 28 U.S.C. § 2255.

DISMISSED.