

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 95-40090
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

REGINALDO URIBE, also known as Keno,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:94-CR-82-2

October 23, 1996

Before POLITZ, Chief Judge, GARWOOD and BENAVIDES, Circuit Judges.

PER CURIAM:*

Reginaldo Uribe appeals his sentence for conspiracy to possess with intent to distribute marihuana, contending that the district court abused its discretion in refusing to afford him a meaningful opportunity to refute the presentence report, and that it erred in

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

ignoring the drug quantity stipulated in the plea agreement. He also contends that his attorney rendered ineffective assistance of counsel.

Our review of the record and the briefs of the parties lends inexorably to the conclusion that Uribe's due process rights were not violated and that the district court did not abuse its discretion in the conduct of the sentencing hearing.¹ Further, the district court may base a sentence on conduct or quantities of drugs apart from that charged in the indictment and stipulated by the parties at the time of the guilty plea.² Finally, we decline to address Uribe's allegations of ineffective assistance of counsel. This complaint was not presented to the district court and the record before us does not permit evaluation of its merits.³

AFFIRMED.

¹**United States v. Henderson**, 19 F.3d 917 (5th Cir.), cert. denied, 115 S.Ct. 207 (1994).

²U.S.S.G. § 6B1.4(d), p.s.; **United States v. Woods**, 907 F.2d 1540 (5th Cir. 1990), cert. denied, 498 U.S. 1070 (1991).

³**United States v. Higdon**, 832 F.2d 312 (5th Cir. 1987), cert. denied, 484 U.S. 1075 (1988).