

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

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No. 95-40869  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

HILARIO GARZA, III, also known as Lalo

Defendant-Appellant.

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Appeal from the United States District Court  
For the Southern District of Texas

(C-95-CR-107-01)

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March 7, 1997

Before WISDOM, KING, and SMITH, Circuit Judges.

PER CURIAM:\*

Garza argues that the district court (1) erred in determining the drug quantity attributable to him under the sentencing guidelines; (2) erred in assessing a two-level upward adjustment for the possession of a firearm during the commission of a drug trafficking offense; and (3) denied Garza the equal protection of

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\*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

the laws by applying a two-level upward adjustment to his sentence while refusing to enhance a co-conspirator's sentence on the same grounds. Garza also argues that he had ineffective assistance of counsel at sentencing.

We have reviewed the record and the briefs of the parties and find no reversible error. We do not review an assertion of ineffective assistance of counsel on direct appeal unless the issue has been presented to the district court; otherwise there is no opportunity for the development of a record on the merits of the claim.<sup>1</sup> The claim of ineffective assistance of counsel was not presented to the district court; therefore, we do not address this issue.

AFFIRMED.

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<sup>1</sup> *United States v. Navejar*, 963 F.2d 732, 735 (5th Cir. 1992).