

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-50396
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GUILLERMO VILLALBA, also
known as Guillermo Villalba,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. EP-93-CR-294-1
- - - - -

February 29, 1996

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Guillermo Villalba argues that the district court erred in determining that the Government did not have the burden of proving that his base offense level should be adjusted upward for his leadership role in the conspiracy.

Villalba is correct that the Government had the burden of proving by a preponderance of the evidence that his conduct warranted an upward adjustment. However, after reviewing the presentence report (PSR), Villalba's objections, and the

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

transcript of the sentencing hearing, we affirm the district court's decision to make the upward adjustment based on the reliable and un rebutted evidence contained in the PSR that reflected that Villalba had a leadership role in the conspiracy. See United States v. Ayala, 47 F.3d 688, 689-90 (5th Cir. 1995)

AFFIRMED.