

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-40013
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN CARLOS GUZMAN-MORALES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-95-CR-171
- - - - -

October 23, 1996

Before POLITZ, Chief Judge, and JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Juan Carlos Guzman-Morales ("Guzman") appeals his sentence for simple possession of marijuana. Guzman contends that he did not receive adequate notice that the magistrate judge might consider an upward departure from his guideline sentencing range; that the magistrate judge should have notified him of the extent of the departure under consideration; and that the magistrate judge failed to consider departure to criminal history categories

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

that would have resulted in a departure to a sentence of less than 12 months.

The presentence report (PSR) provided adequate notice that the magistrate judge might consider an upward departure. See *United States v. Doucette*, 979 F.2d 1042, 1047 n.4 (5th Cir. 1992). The magistrate judge's reasons for departure, Guzman's criminal past, and his use of marijuana while under pretrial supervision, indicated sufficient reasons for the departure and for not selecting a sentence reflecting intermediate criminal history categories. The departure to 12 months' imprisonment was reasonable. See *United States v. McKenzie*, 991 F.2d 203, 204 (5th Cir. 1993); *United States v. Lambert*, 984 F.2d 658, 662-63 (5th Cir. 1993)(en banc).

AFFIRMED.