

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-41231
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISMAEL MICHAEL GARCIA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-87-CR-293
- - - - -

September 10, 1997

Before DUHE', DeMOSS and DENNIS, Circuit Judges.

PER CURIAM:*

Defendant-appellant Ismael Michael Garcia appeals his convictions for conspiracy to possess with intent to distribute approximately 46 kilograms of marijuana, in violation of 21 U.S.C. § 846. Garcia has not demonstrated that the district court committed plain error in refusing to admit hearsay testimony regarding a statement allegedly made by one of Garcia's coconspirators. See United States v. Calverley, 37 F.3d 160,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

162-64 (5th Cir. 1994); United States v. Humphrey, 104 F.3d 65, 70 (5th Cir.), cert. denied, 117 S. Ct. 1833 (1997). Garcia's claim that his trial attorney performed ineffectively by failing to cite a proper hearsay exception to justify the admission of the excluded testimony was not raised before the district court, and the record is not sufficiently developed to permit resolution of the claim. Accordingly, this court declines to address the claim at this time. See United States v. Andrews, 22 F.3d 1328, 1345 (5th Cir. 1994).

AFFIRMED.