

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-50412  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS ALBERTO GUTIERREZ-DIAZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. PE-96-CR-5-1  
- - - - -  
February 24, 1997

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

PER CURIAM:\*

Luis Alberto Gutierrez-Diaz appeals his conviction and sentence for possession with intent to distribute marijuana. Because Gutierrez-Diaz did not move for a judgment of acquittal at the close of the evidence, we review his challenge to the sufficiency of the evidence for plain error or miscarriage of justice. See United States v. Pierre, 958 F.2d 1304, 1310 (5th Cir.) (en banc), cert. denied, 506 U.S. 898 (1992). We find none. We further hold that the district court's determination

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\* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

that Gutierrez-Diaz was not entitled to a downward adjustment based upon minor participation in the offense was not clear error. See United States v. Zuniga, 18 F.3d 1254, 1260-61 (5th Cir.), cert. denied, 115 S. Ct. 214 (1994).

AFFIRMED