

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-10861  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SALVADOR DURAN MUNOZ, also known as Chava,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:97-CR-11-A-1  
- - - - -

April 8, 1998

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Salvador Duran Munoz challenges the sentence he received after pleading guilty to possession with intent to distribute cocaine. He argues that the district court mistakenly believed that it could not downwardly depart pursuant to U.S.S.G. § 5K2.0 based on his extraordinary acceptance of responsibility and his stipulation to be deported. The record does not indicate that the court mistakenly thought it lacked the authority to downwardly depart. This claim is thus not reviewable. See

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Burleson, 22 F.3d 93, 95 (5th Cir. 1994). Munoz also argues that he was entitled to the "safety-valve" provision of § 5C1.2. The court's failure to apply this guideline did not constitute plain error. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc). We have reviewed the record and the parties' briefs and AFFIRM the sentence imposed by the district court.

AFFIRMED.