

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-11323  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAIME LUNA RODRIGUEZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:97-CR-158-32-P  
- - - - -

August 19, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:\*

Jaime Luna Rodriguez appeals his guilty-plea conviction and sentence for conspiracy to import marijuana, to distribute marijuana, and to possess marijuana with intent to distribute in violation of 21 U.S.C. § 846. Rodriguez argues that the district court erred in determining that he was responsible for transporting 9000 pounds of marijuana. Rodriguez' plea agreement contains a provision in which Rodriguez waived his right to appeal his sentence unless the sentence was imposed in excess of

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the statutory maximum, was the result of an upward departure, or was the result of an arithmetic error in the calculation of his offense level. We have reviewed the record and conclude that the waiver was informed and voluntary and is therefore binding on Rodriguez. See United States v. Portillo, 18 F.3d 290, 292 (5th Cir. 1994). Rodriguez' claim that the district court erred in calculating the amount of marijuana attributable to him is barred by the waiver-of-appeal provision. Because Rodriguez' sentence was not in excess of the statutory maximum, was not imposed as a result of an upward departure, and was not imposed as a result of an arithmetic error in the calculation of his offense level, he may not challenge his sentence on appeal. Rodriguez' appeal is without arguable merit. Accordingly, it is DISMISSED. 5th Cir. R. 42.2.

APPEAL DISMISSED.