

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40431
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ASCENCION GARZA,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-96-CR-314-6
- - - - -
June 26, 1998

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

Per Curiam:*

Ascencion Garza appeals his guilty-plea conviction for conspiracy to possess with intent to distribute in excess of 1,000 kilograms of marijuana. On appeal, Garza asserts, inter alia, that the statements of co-conspirators on which the district court relied in part in sentencing Garza to 300 months imprisonment "are not part of the record on appeal and thus unreviewable and cannot support the District Court's finding of relevant conduct based on

*Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.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 preponderance of the evidence.”

The appellate briefs indicate that some disagreement may exist with respect to whether statements of Garza’s co-conspirators were actually introduced into the record of Garza’s sentencing hearing. In any event, these statements were not physically included in the record sent to this Court on appeal. Accordingly, we vacate the defendant’s sentence and remand the case to the district court with instructions for it to determine whether the statements in question were actually admitted into evidence at sentencing and to resentence the defendant in light of its determination. If the statements have been properly admitted into evidence at Garza’s sentencing hearing, they shall be made part of the record of this case for purposes of appeal. See FRAP 10 (e). We reserve Garza’s right to appeal from the district court’s determination and resentencing.

Accordingly Garza’s sentence is VACATED and the case is REMANDED to the district court with instructions.