

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40467
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JORGE LUIS GARZA,

Defendant-Appellant.

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Appeal from the United States District Court
for the Southern District of Texas
(96-CR-314-5)

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April 5, 2000

Before POLITZ, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Jorge Luis 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 relied on by the district court to calculate the amount of drugs attributable to him were not made part of the record on appeal, and thus cannot "be

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

considered as part of his relevant conduct in determining his base offense level.”

The statements of Garza’s co-conspirators in question were not physically included in the record sent to us on appeal. Accordingly, we vacate Garza’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 were duly admitted into evidence at Garza’s sentencing hearing, they shall be made part of the record of this case for purposes of appeal. See Fed. R. App. P. 10(e). We reserve to Garza the 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.

VACATED AND REMANDED.