

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40965
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ENRIQUE MORENO,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. C-97-CR-110-1
- - - - -

August 18, 1998

Before KING, HIGGINBOTHAM, and JONES, Circuit Judges.

PER CURIAM:*

Enrique Moreno pleaded guilty to count two of an indictment charging him with conspiracy to possess with intent to distribute marijuana. Moreno has raised one issue on appeal--whether the district court erred in failing to depart to the extent requested by the Government in its motion for a downward departure. The argument raised by Moreno was rejected by the court in United States v. Alvarez, 51 F.3d 36, 38-41 (5th Cir. 1995). Because the appeal is frivolous, it is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No.

-2-

APPEAL DISMISSED.