

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20370
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESUS M. TORNE,

Defendant-Appellant.

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

April 19, 1999

Before JONES, SMITH and DUHÉ, Circuit Judges.

PER CURIAM:*

Jesus Torne appeals his sentence after his guilty plea to possession with intent to distribute cocaine. Torne argues that the district court erred in refusing to decrease his offense level for acceptance of responsibility.

We have reviewed the record, the presentence report, and the briefs, and we hold that the district court did not err in refusing to make a downward adjustment for acceptance of responsibility. United States v. Vital, 68 F.3d 114, 121 (5th

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Cir. 1995). Torne's case is distinguishable from United States v. Patino-Cardenas, 85 F.3d 1133, 1135-36 (5th Cir. 1996), in that Torne repeatedly attempted to explain the facts at his sentencing hearing, and because, through his counsel's statements on his behalf, he did not remain silent but falsely denied that he did not initiate the discussions about killing his associate. Further, his statement of acceptance of responsibility at the sentencing hearing did not contain an expression of remorse or contrition. A defendant's failure to express remorse or contrition is a sufficient reason for denying an adjustment for the acceptance of responsibility. United States v. Helmstetter, 56 F.3d 21, 23 (5th Cir. 1995). The district court's determination that Torne was not entitled to the adjustment for acceptance of responsibility was not without foundation.

AFFIRMED.