

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-20907
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANK MARTINEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CR-12-5

February 17, 2000

Before EMILIO M. GARZA, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Frank Martinez entered a guilty plea to one count of conspiracy to possess with the intent to distribute cocaine, and was sentenced to 135 months' imprisonment. He appeals his conviction and sentence. Martinez has also moved for leave to file a reply brief out of time. The motion is GRANTED.

Martinez executed an informed and voluntary waiver of his right of appeal, with the exception of his right to appeal a sentence imposed in excess of the statutory maximum or an upward departure from the sentencing guidelines that was not requested by the Government. See United States v. Portillo, 18 F.3d 290,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

292 (5th Cir. 1994). The issues raised in this appeal do not fall within those exceptions, and therefore will not be reviewed. This appeal is without arguable merit and thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983). It is therefore dismissed.

DISMISSED.