

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10618
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRANCISCO GARZA, JR., also known as Paco,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CR-107-5-E

February 14, 2000

Before SMITH, BARKSDALE, and PARKER, Circuit Judges.

PER CURIAM:*

Francisco Garza ("Garza") appeals his conviction and sentence for conspiracy to possess with intent to distribute marijuana, 21 U.S.C. §§ 846, 963. He argues that insufficient evidence existed to support his conviction because his "mere presence" did not prove beyond a reasonable doubt that he voluntarily participated in the conspiracy. Garza further argues that the district court clearly erred by (1) increasing his offense level two levels, pursuant to U.S.S.G. § 3B1.1(c), for

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

having an aggravating role in the offense and (2) denying his motion to reduce his offense level two levels, pursuant to U.S.S.G. § 3B1.2(b), for having a mitigating role in the offense.

This court has reviewed the record and the briefs of the parties and concludes that: (1) sufficient evidence existed to support Garza's conviction, see United States v. Gonzales, 121 F.3d 928, 935 (5th Cir. 1997); and (2) neither the district court's decision to enhance Garza's offense level two-levels nor its decision to deny Garza's motion to reduce his offense level two levels was clearly erroneous, see United States v. Valencia-Gonzales, 172 F.3d 344, 346-47 (5th Cir.), cert. denied, 120 S. Ct. 222 (1999); United States v. Lowder, 148 F.3d 548, 553-54 (5th Cir. 1998). The judgment of the district court is AFFIRMED.