

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-11018
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FLORENTINO NUNEZ JIMENEZ,
also known as Javier Padilla Avila,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:95-CR-102-4-Y

June 18, 2002

Before HIGGINBOTHAM, DAVIS, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Florentino Nunez Jimenez ("Nunez") appeals the sentencing following his guilty plea for distribution of pure methamphetamine. Nunez argues that the district court erred in assessing a two point sentencing enhancement for possession of a firearm during the commission of the convicted offense. Nunez also argues that the district court erred in refusing to award him credit for the time that he served in state confinement.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The district court's decision to enhance Nunez' offense level for possession of a firearm under § 2D1.1(b)(1) is a factual determination that this court reviews for clear error. United States v. Broussard, 80 F.3d 1025, 1041 (5th Cir. 1996). The firearm adjustment was not clearly erroneous because the gun was found in Nunez' bedroom, where the drugs were also found, and because Nunez failed to establish that it was "clearly improbable" that the gun was connected with the offense. See United States v. Vasquez, 161 F.3d 909, 913 (5th Cir. 1998).

Nunez' argument regarding the district court's failure to credit him for the time that he served in state custody is foreclosed by United States v. Wilson, 503 U.S. 329, 331-32, 334 (1992).

For the foregoing reasons, Nunez' sentence is AFFIRMED.