

January 11, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41737
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RUBALDINO PECINA, also known as Ruby,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 1:05-CR-44-5

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:*

Rubalindo Pecina appeals the sentence imposed because of his guilty plea conviction of conspiracy to possess with intent to distribute over five kilograms of cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1), (b)(1)(A). In his plea agreement, Pecina waived the right to challenge his sentence, except in limited circumstances not applicable here. The Government seeks to enforce the waiver.

Pecina does not argue that his appeal waiver was unknowing or involuntary. Rather, he argues that the waiver should not be

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

enforced on public policy grounds because he was not sentenced at the bottom of the Guideline imprisonment range, contrary to the Government's recommendation under the plea agreement.

At his rearraignment, Pecina acknowledged the existence of the plea agreement and the fact that he waived the right to appeal his sentence. He also stated that he had read the plea agreement before signing it, reviewed it with counsel, and that he was entering into the plea voluntarily. Pecina acknowledged that the district court was not bound by the Government's recommendation with regard to the sentence. Accordingly, Pecina's appeal is barred by the waiver contained in the plea agreement. See United States v. Portillo, 18 F.3d 290, 292 (5th Cir. 1994). We have not considered Pecina's contention that the district court's sentence was unreasonable.

AFFIRMED.