

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20921
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDUARDO PENAFIEL-RIVAS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-96-CR-91-1
- - - - -

August 15, 1997

Before KING, HIGGINBOTHAM, and DUHÉ, Circuit Judges.

PER CURIAM:*

Eduardo Francisco Penafiel-Rivas (Rivas) appeals the 46-month sentence imposed by the district court following the acceptance of his guilty plea for various heroin-related offenses. Rivas argues that the district court clearly erred in not finding that he was a minor participant in the drug conspiracy and reducing his offense level accordingly under

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

§ 3B1.2 of the U.S. Sentencing Guidelines. Because Rivas was responsible for a large quantity of heroin, 579.9 grams, seized from his person, and because he was held responsible for only the amount of drugs that he actually possessed, § 3B1.2 does not require a reduction in his base offense level even though his activity in the overall drug conspiracy may have been minor. See United States v. Buenrostro, 868 F.2d 135, 137-38 (5th Cir. 1990). Further, Rivas was sentenced only for the drugs he actually carried and not those which might be attributed to a larger conspiracy. See United States v. Flucas, 99 F.3d 177, 181 (5th Cir.) cert. denied 117 S. Ct. 1097 (1997).

AFFIRMED.