

May 2, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-50437
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHNNY S. ESTRADA, JR., also known as Juanillo,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:05-CR-67-9

Before HIGGINBOTHAM, WIENER, and PRADO, Circuit Judges.

PER CURIAM:*

Appealing the Judgment in a Criminal Case, Johnny S. Estrada, Jr., raises arguments that are foreclosed by United States v. Gamez-Gonzalez, 319 F.3d 695, 699-700 (5th Cir. 2003), which held that knowledge of the drug type is not a material element of the offense under 21 U.S.C. § 841, and by United States v. Valencia-Gonzales, 172 F.3d 344, 345-46 (5th Cir. 1999), which held that the defendant may be sentenced under the guidelines according to the drug he was carrying rather than the drug he believed he was carrying. The Government's motion 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

No. 05-50243

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summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.