

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20426
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MELQUIADES ROCHA LEOS, also known as
Jose Leos, also known as El Pelon,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-99-CR-370-2

June 1, 2001

Before SMITH, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Counsel for Melquiades Rocha Leos has moved for leave to withdraw and has filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Leos has received a copy of counsel's brief and has filed a response.

Leos argues that the district court improperly enhanced his sentence under United States Sentencing Guidelines §§ 2D1.1(b)(1) and 3B1.1(b). Leos knowingly and voluntarily waived his right to appeal his sentence or the manner in which it was determined.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

See United States v. Portillo, 18 F.3d 290, 292 (5th Cir. 1994).

This argument is therefore foreclosed.

Leos also challenges the indictment, the sentence, and counsel's performance on the basis of Apprendi v. New Jersey, 530 U.S. 466 (2000), and Jones v. United States, 526 U.S. 227 (1999). There can be no Apprendi or Jones violation because Leos's sentence was not increased above the statutory maximum of life imprisonment by any of the findings made by the district court at sentencing. United States v. Keith, 230 F.3d 784, 786-87 (5th Cir. 2000), cert. denied, 121 S. Ct. 1163 (2001).

We do not address Leos's conclusional assertion that counsel was ineffective because he failed to investigate the case or prepare for trial. See United States v. Volsken, 766 F.2d 190, 193 (5th Cir. 1985).

Our independent review of the brief, the record, and Leos's response discloses no nonfrivolous issue for appeal. Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. See 5th Cir. R. 42.2. Leos's motion for appointment of new counsel is DENIED.