

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-20588  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FLORENCIO MERCEDES, also known as Francisco,  
also known as Frank,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-00-CR-875-7  
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April 29, 2002

Before DAVIS, BENAVIDES and CLEMENT, Circuit Judges.

PER CURIAM:\*

Florencio Mercedes pleaded guilty to count four of an indictment charging him with possession with intent to distribute 500 grams or more of cocaine and aiding and abetting and has appealed his sentence. Mercedes contends that the district court erred in departing upward to Criminal History Category II in determining his sentence. Mercedes also contends that the district court should have adjusted his offense level under

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

U.S.S.G. § 2D1.1(b)(6) (Safety Valve). Because Mercedes forfeited these issues in the district court, we review for plain error. See United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc).

The district court did not err in considering Mercedes' prior uncounted drug and firearms convictions in determining whether Mercedes' criminal history category did not reflect adequately the seriousness of Mercedes' criminal history or propensity for recidivism. See United States v. Alford, 142 F.3d 825, 831 (5th Cir. 1998). Any error in applying the Safety Valve provision was neither clear nor obvious. See Calverley, 37 F.3d at 162-63.

The judgment is AFFIRMED.