

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21187
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MARCELO RIVERA-PORTILLO, also known as
Marcelo Rivera DeLaPortillo,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(H-01-CR-114-1)

June 27, 2002

Before HIGGINBOTHAM, WIENER, and BARKSDALE, Circuit Judges

PER CURIAM:*

Marcelo Rivera-Portillo appeals his sentence following his guilty-plea conviction for illegal reentry into the United States following deportation after an aggravated felony conviction. Rivera contends the district court's written judgment conflicts with the judgment it pronounced orally at sentencing.

"[W]hen there is a conflict between a written sentence and an oral pronouncement, the oral pronouncement controls." *United*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

States v. Martinez, 250 F.3d 941, 942 (5th Cir. 2001). Such a conflict is present in the instant case.

The written judgment required Rivera to submit to periodic drug testing and to participate in a mental health program. It also required him to incur the costs associated with those activities. The district court's oral pronouncement at sentencing, however, contained no such conditions.

Accordingly, the judgment is vacated, and this case is remanded for the limited purpose of allowing the district court to amend its written judgment to conform to its oral sentence. **Id.**

VACATED AND REMANDED FOR AMENDMENT OF JUDGMENT