

August 18, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 03-40114  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN CARLOS RODRIGUEZ-RUIZ,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. C-02-CR-217-1  
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Before HIGGINBOTHAM, DAVIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Juan Carlos Rodriguez-Ruiz (Rodriguez) appeals the sentence he received following his guilty-plea conviction to possession of cocaine with intent to distribute. He asserts that the district court erred in denying him a downward adjustment pursuant to the safety valve provision, U.S.S.G. § 5C1.2. Rodriguez has not met his burden of establishing that he provided truthful and complete information to the Government. See § 5C1.2(a)(5); United States v. Flanagan, 80 F.3d 143, 146 (5th Cir. 1996). He has not shown

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that the district court clearly erred in denying the adjustment. See United States v. Miller, 179 F.3d 961, 963-64 (5th Cir. 1999).

Rodriguez also asserts that the district court erred in denying him an adjustment for his minor role in the offense. Typically this court reviews such claims for clear error. United States v. Gallegos, 868 F.2d 711, 713 (5th Cir. 1989). However, because Rodriguez moved in the district court for an adjustment based upon his *minimal* role, this court should review for plain error. See United States v. Leonard, 157 F.3d 343, 345 (5th Cir. 1998). Regardless which standard we use, Rodriguez has not established that he was "substantially less culpable than the average participant." U.S.S.G. § 3B1.2, comment. (n.3(A)); United States v. Lokey, 945 F.2d 825, 840 (5th Cir. 1991). The judgment of the district court is therefore AFFIRMED.