

October 20, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-40809
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAY PEREZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:00-CR-439-7

Before JOLLY, JONES, and WIENER, Circuit Judges.

PER CURIAM:*

Ray Perez appeals the sentence following his guilty-plea conviction for possessing 470 kilograms of cocaine with the intent to distribute. He contends that the district court should have awarded him a two-level reduction under U.S.S.G. § 3B1.2(b). He has not established that the district court clearly erred in denying the reduction because he has not shown that he was "substantially less culpable than the average participant."

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Lokey, 945 F.2d 825, 840 (5th Cir. 1991); United States v. Gallegos, 868 F.2d 711, 713 (5th Cir. 1989).

Perez also complains about the district court's consideration of the Government's motion for a downward departure based upon Perez's substantial assistance, pursuant to U.S.S.G. § 5K1.1. To the extent Perez asserts that he was not awarded a departure, he is incorrect. To the extent that Perez is arguing that the 55-month reduction he received was insufficient, he has not established that the district court abused its discretion in the extent of the departure. See United States v. Bell, 371 F.3d 239, 243 (5th Cir. 2004), cert. denied (U.S. Oct. 4, 2004) (No. 04-5954). The judgment of the district court is therefore AFFIRMED.