

June 22, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40273
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROLANDO ROSA GARCIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:03-CR-205-2

Before WIENER, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Rolando Rosa Garcia appeals his conviction and sentence following a jury trial for conspiring to possess with intent to distribute 96 kilograms of marijuana and possession of the same. This court will not address Garcia's argument, raised for the first time on appeal, that he was denied effective assistance of counsel because counsel failed to file timely objections to the Presentence Report. See United States v. Miller, 406 F.3d 323, 335-36 (5th Cir. 2005). Further, Garcia fails to meet his burden of showing that the district court's sentence, which was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

determined by applying enhancements under the Guidelines, was plain error under United States v. Booker, 125 S. Ct. 738 (2005). Miller, 406 F.3d at 336-37; United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005), petition for cert. filed (Mar. 31, 2005) (No. 04-9517).

Without prejudice to Garcia's right to claim ineffective assistance of counsel in a 28 U.S.C. § 2255 motion, the judgment of the district court is AFFIRMED.