

FILED

December 16, 2004

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 04-50144
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUCIA RODRIGUEZ MENDIETA,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. A-03-CR-227-2-H

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Lucia Rodriguez Mendieta appeals the sentence following her guilty-plea convictions for conspiring to distribute and for distributing cocaine. The Government has moved to strike Mendieta's amended appellate brief because Mendieta added an appellate argument, which surpassed the scope of the order to amend. This motion is DENIED.

Mendieta argues that the district court erred in imposing a four-level increase under U.S.S.G. § 3B1.1(a), based upon a

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

finding that she was a manager or supervisor in an enterprise involving five or more people. The information in the presentence report, which is presumed reliable, reveals that at least five individuals participated in the cocaine conspiracy and that Mendieta had control over the cocaine that was sold and the individuals who sold cocaine on her behalf. See United States v. Alford, 142 F.3d 825, 831-32 (5th Cir. 1998). Mendieta's argument that the increased sentence was improper under Blakely v. Washington, 124 S. Ct. 2531 (2004), is foreclosed. See United States v. Pineiro, 377 F.3d 464, 473 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004)(No. 04-5263). The judgment of the district court is AFFIRMED.