

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8647
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MOISES CONTRERAS-OLIVAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(MO 93 CR 051 (1))

June 9, 1994

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

The appellant in this case was sentenced to nine years imprisonment for a drug violation involving more than five kilos of cocaine. His statutory minimum sentence was ten years. It is therefore nearly impossible to comprehend why he appealed, contending that the district court failed to admonish him of the

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

statutory minimum. He clearly was not harmed by the court's omission.

We note in passing that the government concedes error in its belief that the parties could control the applicability of the statutory mandatory sentence by failing to allege a drug quantity in the indictment or by enhancement information. United States v. Watch, 7 F.3d 422, 427 (5th Cir. 1993). The government's mistake in this case does not arise to plain error. Compare United States v. Schmeltzer, ___ F.2d ___ (cite to the previous Smeltzer case). This court is, however, unsympathetic to the government's attempts to avoid applicable statutory minimum sentences that have been fixed by Congress.

AFFIRMED.