

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60369
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOE HERNANDEZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-C-91-283
- - - - -
(March 23, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

The imposition of a lawful sentence coupled with the decision not to depart from the guidelines provides no issue for appellate review. See United States v. Miro, 29 F.3d 194, 198-99 n.4 (5th Cir. 1994). The extent of a downward departure under U.S.S.G. § 5K1.1 that results in a sentence that is neither a violation of the law nor a misapplication of the guidelines is not reviewable on appeal provided the district court exercised

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

independent judgment in making the departure decision. See
United States v. Johnson, 33 F.3d 8, 9-10 (5th Cir. 1994).

Joe Hernandez challenges only the extent of the downward departure awarded for his substantial assistance. He does not allege a legal error or a misapplication of the guidelines. The district court's decision to grant only a two-level downward departure is not reviewable on appeal. Hernandez's sentence is AFFIRMED.