

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-20985
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRES GARCIA, also known as
Adres Gamaz, also known as
Nestor Hugo Arbalaez,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-94-101-10
- - - - -

October 23, 1996

Before POLITZ, Chief Judge, and JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Andres Garcia appeals his sentence following conviction for conspiracy to possess with intent to distribute cocaine, in violation of 21 U.S.C. § 846. He argues that the district court erred in refusing to grant him a downward departure based on his family's financial circumstances and in refusing to grant him a four-level Sentencing Guidelines reduction for his role as "minimal" participant in the offense. This court lacks

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

jurisdiction to address Garcia's challenge to the district court's refusal to enter a downward departure. United States v. DiMarco, 46 F.3d 476, 477 (5th Cir. 1995); United States v. Burleson, 22 F.3d 93, 95 (5th Cir.), cert. denied, 115 S. Ct. 283 (1994). The district court's finding that Garcia was not a "minimal" participant was not clearly erroneous. See United States v. Zuniga, 18 F.3d 1254, 1261 (5th Cir.), cert. denied, 115 S. Ct. 214 (1994); U.S.S.G. § 3B1.2(b) & comment, (n.2).

AFFIRMED.