

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-20959  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CANUTO GUZMAN GAITAN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CR-35-7  
- - - - -

September 23, 1998

Before DAVIS, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:\*

Canuto Guzman Gaitan has appealed his guilty-plea sentence for conspiracy to possess heroin with intent to distribute it, in violation of 21 U.S.C. § 846. Gaitan contends that the district court erred (1) by concluding that it could not depart downward from the sentencing guideline range, and (2) by sentencing him as a "career offender."

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gaitan's plea agreement provides that he has waived his right to appeal his sentence unless it is the result of an upward departure. Our review of the record convinces us that the waiver was informed and voluntary, so it is binding on Gaitan. See United States v. Portillo, 18 F.3d 290, 292-93 (5th Cir. 1994). His waiver bars Gaitan from presenting his two appellate claims. Accordingly, Gaitan's appeal is DISMISSED for lack of arguable merit. See 5TH CIR. R. 42.2.

APPEAL DISMISSED.