

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40360
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID REYES,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. L-91-CR-247-1
- - - - -

October 21, 1998

Before POLITZ, Chief Judge, and WIENER and DENNIS, Circuit Judges.

PER CURIAM:*

David Reyes appeals his sentence for conspiracy to possess with the intent to distribute marijuana. He argues that the Government breached the plea agreement by making a less-than-enthusiastic recommendation that the court depart downward pursuant to U.S.S.G. § 5K1.1, p.s. Under the plea agreement, the Government retained full discretion over the decision whether to file a motion for downward departure, United States v. Price, 95 F.3d 364 (5th Cir. 1996), and Reyes has not shown that the Government's alleged lackluster § 5K1.1 recommendation was based

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

on an unconstitutional motive. See Wade v. United States, 504 U.S. 181 (1992). Nor is the Government required to argue enthusiastically for a particular sentencing recommendation. Benchimol v. United States, 471 U.S. 453, 455-57 (1985). Reyes cannot prevail on his claim for breach. The sentence of the district court is AFFIRMED.

AFFIRMED.