

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-10628
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GONZALO ARMANDO DIAZ,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:98-CR-228-1-Y
- - - - -

December 15, 1999

Before JOLLY, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Gonzalo Armando Diaz pleaded guilty to conspiracy to possess with intent to distribute more than five kilograms of cocaine. He appeals his sentence arguing that his two prior convictions for driving while intoxicated should not have been counted towards his criminal history score and that he therefore should have been granted a safety-valve adjustment pursuant to U.S.S.G. §§ 2D1.1(b)(6) and 5C1.2.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Diaz's argument regarding his prior convictions primarily consists of his request for this court to depart from the Supreme Court's holding in Nichols v. United States, 511 U.S. 738, 746-48 (1994). The holding in Nichols is not relevant to the facts of this case. Furthermore, if it were relevant, we could not depart from Supreme Court precedent. We warn his court-appointed counsel, R. Sam Pestinger, that pursuing frivolous appeals invites sanctions. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir. 1994).

Accordingly, this appeal is DISMISSED AS FRIVOLOUS. See 5TH CIR. R. 42.2.