

June 19, 2007

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 06-40584
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

NICOLAS PENA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 7:05-CR-149-2

Before JONES, Chief Judge, and JOLLY and DENNIS, Circuit Judges.

PER CURIAM:*

Nicolas Pena appeals the 96-month sentence imposed following his guilty plea conviction for importing cocaine. He argues that the district court erred by not finding that he played a minor role in the offense and sentencing him accordingly. As Pena concedes, this claim is reviewed for plain error only due to his failure to raise it in the district court. See United States v. Villegas, 404 F.3d 355, 358 (5th Cir. 2005).

Pena has failed to establish that he was less culpable than other participants in the offense. See U.S.S.G. § 3B1.2,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

comment. (n.5). He has not shown that the district court plainly erred in connection with his sentence. The judgment of the district court is AFFIRMED.