

July 7, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-41637
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DANIEL ESTEBAN ORTEGA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:05-CR-215-ALL

Before JONES, Chief Judge, and SMITH and GARZA, Circuit Judges.

PER CURIAM:*

Daniel Esteban Ortega appeals his ten-month sentence of imprisonment following his guilty plea conviction for transporting an unlawful alien within the United States. Ortega argues that the district court committed plain error by considering that Ortega had not cooperated with the Government in deciding to sentence him to imprisonment rather than probation. This was not error. See Roberts v. United States, 445 U.S. 552, 557-58 (1980); United States v. Dickson, 712 F.2d 952, 955 (5th Cir. 1983).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Ortega argues that consideration of his lack of cooperation violated his Fifth Amendment privilege against self-incrimination. He did not assert the privilege in the district court and, thus, this issue is deemed waived. See Roberts, 445 U.S. at 559; United States v. Pool, 660 F.2d 547, 556 (5th Cir. 1981).

AFFIRMED.