

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-40077  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

HUGO ARMANDO CONTRERAS-DEL TORO,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. L-95-CR-52-1  
- - - - -

October 22, 1997

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

PER CURIAM:\*

Hugo Armando Contreras-Del Toro appeals the district court's refusal to reduce his criminal history category. Contreras-Del Toro did not pursue a direct appeal of the initial sentencing order, but instead appended his request to the Government's motion to reduce sentence pursuant to Fed. R. Crim. P. 35(b), a motion made one year after the original sentencing. The plain language of Rule 35(b) permits sentence reduction only on the Government's motion where a defendant has rendered substantial

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

assistance after sentencing. *United States v. Early*, 27 F.3d 140, 141 (5th Cir. 1994). The district court declined to grant the relief Contreras-Del Toro sought. Indeed, the court lacked jurisdiction to consider Contreras-Del Toro's request to recalculate his criminal history category. *See Early*, 27 F.3d at 141-42.

AFFIRMED.