

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-40514
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISMELDO VENTURA-GUTIERREZ,

Defendant-Appellant.

Appeals from the United States District Court for the
Southern District of Texas
(M-95-CV-330)

January 23, 1998
Before GARWOOD, DeMOSS and PARKER, Circuit Judges.*

PER CURIAM:

Ismeldo Ventura-Gutierrez, federal prisoner #65009-079, appeals from the district court's denial of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. He avers that the government breached the plea agreement by failing to file a motion for downward departure pursuant to U.S.S.G. §

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 R. 47.5 the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

5K1.1 and that his counsel was ineffective in recommending he plead guilty. Ventura-Gutierrez also avers, for the first time in his reply brief, that the district court erred in refusing to hold an evidentiary hearing. We have reviewed the record and find no error. Accordingly, the judgment is AFFIRMED for essentially the same reasons adopted by the district court. See *United States v. Ventura-Gutierrez*, No. M-95-CV-330 (S.D. Tex. March 31, 1997).

AFFIRMED¹

¹Ventura-Gutierrez's motion for appointment of counsel is denied.