

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-21008
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ISIDRO ARAUJO, also known as Wilfredo Hernandez,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-78-01

February 28, 2000

Before POLITZ, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Isidro Araujo, also known as Wilfredo Hernandez, appeals his conviction by a jury for conspiracy to possess more than five kilograms of cocaine with intent to distribute and possession of more than five kilograms of cocaine with intent to distribute.² He contends that the district court abused its discretion in refusing to give a jury instruction on the lesser included offenses of conspiracy to possess cocaine or

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

²21 U.S.C. §§ 841 (a)(1) and 846.

simple possession of cocaine. Our review of the record persuades that Araujo's intent to distribute can be inferred from his possession of 9.5 kilograms of cocaine. We conclude that no reasonable jury could have found him guilty of conspiracy to possess cocaine or possession of cocaine and then have acquitted him of the more serious offenses of conspiracy to possess cocaine with intent to distribute or possession of cocaine with intent to distribute.³ Accordingly, we find no abuse of discretion in the trial court's refusal to give the requested jury instruction for a lesser included offense of conspiracy to possess cocaine or simple possession of cocaine.

AFFIRMED.

³See United States v. Lucien, 61 F.3d 366 (5th Cir. 1995).