

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-40826
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO TENORIO-ROJAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-98-CR-196-1

August 24, 1999

Before KING, Chief Judge, and DAVIS and SMITH, Circuit Judges.

PER CURIAM:*

Roberto Tenorio-Rojas (Tenorio) appeals his sentence after pleading guilty to transporting an alien within the United States. For the first time on appeal, he contends that the district court, in making his six-month sentence for the instant offense run consecutively to the term imposed for violating probation, did not follow the usual procedures for departing from the Sentencing Guidelines and relied on factors that had already been considered by the Guidelines. The Government argues that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Tenorio waived his right to appeal his sentence in his plea agreement.

A defendant may waive his statutory right to appeal his sentence as part of a valid plea agreement. United States v. Melancon, 972 F.2d 566, 568 (5th Cir. 1992). Tenorio's appeal brief does not address the waiver issue. This appeal is wholly without merit and is frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Because the appeal is frivolous, it is dismissed. See 5th Cir. R. 42.2.

APPEAL DISMISSED.