

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-40314
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOSÉ RIVERA, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(C-97-CR-34-2)

November 8, 1999

Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

José Rivera appeals his sentence following the revocation of his probation. Rivera raises due process and bias charges regarding the revocation hearing, and claims that the 36-month prison sentence imposed, the maximum allowed for Rivera's offense of misprision of a firearm, was an abuse of discretion.

We find no merit in Rivera's claims. There was no plain error in the district judge's failure to recuse herself, an act needed only where the judge's favoritism or antagonism make fair judgment impossible. See Liteky v. United States, 510 U.S. 540,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

555 (1994). Further, the judge served in a neutral and detached manner and sufficiently warned Rivera of the consequences of a plea of "true" to satisfy due process requirements.

Finally, the 36-month sentence was not an abuse of discretion where the district court first considered the relevant policy guidelines and where the sentence was the maximum allowed for Rivera's underlying offense.

AFFIRMED.