

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

October 16, 2012

Lyle W. Cayce
Clerk

No. 12-40572
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FERNANDO SERGIO SERNA-RIVERA,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:12-CR-73-1

Before HIGGINBOTHAM, SMITH, and HAYNES, Circuit Judges.

PER CURIAM:*

Appealing the judgment in a criminal case, Fernando Sergio Serna-Rivera challenges his sentence on the ground that the district court engaged in double counting by using his prior drug-trafficking conviction to increase both his offense level and his criminal history score. Serna-Rivera raises the issue to preserve it for possible further review but concedes that his argument is foreclosed by *United States v. Calbat*, 266 F.3d 358, 364 (5th Cir. 2001), and *United States v. Box*, 50 F.3d 345, 359 (5th Cir. 1995). See *United States v.*

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

No. 12-40572

Duarte, 569 F.3d 528, 529-31 (5th Cir. 2009). Accordingly, the Government's motion for summary affirmance is GRANTED, the Government's alternative motion for an extension of time to file a brief is DENIED, and the judgment of the district court is AFFIRMED.