

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

United States Court of Appeals
Fifth Circuit

FILED

April 29, 2014

Lyle W. Cayce
Clerk

No. 12-50316
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN ANTONIO HERNANDEZ-MEDRANO,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 4:11-CR-337-3

Before DAVIS, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Juan Antonio Hernandez-Medrano (Hernandez) pled guilty pursuant to a plea agreement to aiding and abetting in the possession with intent to distribute more than 100 kilograms but less than 1000 kilograms of marijuana. He was sentenced to a bottom-of-the-guidelines sentence of 30 months to be followed by a five-year term of supervised release.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. 12-50316

Hernandez argues that his sentence should be vacated and the case remanded to allow the district court to conform the written judgment to its oral pronouncement by removing the special conditions of supervised release requiring mandatory drug testing. The Government in its motion to modify the written judgment agrees that the written judgment should be amended to conform with the oral pronouncement.

The record supports the parties' assertion that there is a conflict between the oral pronouncement of sentence and the written judgment in that the district court in its oral pronouncement stated that it was waiving the mandatory drug-testing requirement and the written judgment included that requirement. The Government's motion to modify the written judgment is GRANTED in part and its alternative motion for extension of time to file appellee's brief is DENIED as unnecessary. The sentence is VACATED in part and the case is REMANDED to the district court so that it can modify the written judgment to conform with the oral pronouncement of sentence. *See United States v. Wheeler*, 322 F.3d 823, 828 (5th Cir. 2003).