

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

No. 17-40930
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 19, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

IVAN ARROYO,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 2:17-CR-184-2

Before REAVLEY, JONES, and HIGGINSON, Circuit Judges.

PER CURIAM:*

Ivan Arroyo appeals the 120-month sentence imposed following his guilty plea conviction for conspiracy to possess with intent to distribute 6.896 kilograms of methamphetamine. He argues that his counsel was ineffective in failing to object to the absence of a recommendation in the presentence report for a reduction of his sentence under U.S.S.G. § 5C1.2(a), the safety valve provision. Further, he contends that his counsel was ineffective in failing to

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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argue at sentencing that the safety valve provision should be applied to reduce his sentence.

We consider an ineffective assistance of counsel claim on direct appeal only in “rare cases in which the record allows a reviewing court to fairly evaluate the merits of the claim.” *United States v. Isgar*, 739 F.3d 829, 841 (5th Cir. 2014) (internal quotations omitted). This is not one of those rare cases, as the record sheds no light on trial counsel’s “conduct and motivations.” *Id.* (internal quotations omitted). We decline to consider Arroyo’s ineffective assistance of counsel claim on direct appeal, without prejudice to Arroyo’s right to seek collateral review of the claim.

AFFIRMED.