

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 05-1994

United States of America,	*	
	*	
Appellee,	*	Appeal from the United States
	*	District Court for the District
v.	*	of Minnesota.
	*	
Jose Cervantes,	*	[UNPUBLISHED]
	*	
Appellant.	*	

Submitted: February 7, 2006
Filed: February 8, 2006

Before MELLOY, FAGG, and BENTON, Circuit Judges.

PER CURIAM.

Jose Cervantes appeals the 120-month concurrent prison sentences the district court* imposed after Cervantes pleaded guilty to a drug-conspiracy charge and a charge for aiding and abetting drug possession with intent to distribute. Cervantes argues the court erroneously assessed a total of three criminal-history points, thus rendering him ineligible for safety-valve relief under U.S.S.G. § 5C1.2.

*The Honorable Joan N. Ericksen, United States District Judge for the District of Minnesota.

Having carefully reviewed the record, we conclude the district court's calculation was correct. Contrary to Cervantes's argument, the district court properly assessed two criminal-history points because it is undisputed a valid warrant for a probation violation existed at the time Cervantes committed the crimes in this case. See U.S.S.G. § 4A1.2(m) (defendant who commits instant offense while, e.g., probation violation warrant is outstanding is deemed under a criminal justice sentence for purposes of U.S.S.G. § 4A1.1(d)). Accordingly, we affirm.
