

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
ELIAS CONTRERAS,
Defendant-Appellant.

No. 00-4340

Appeal from the United States District Court
for the District of South Carolina, at Greenville.
Henry M. Herlong, Jr., District Judge.
(CR-99-209)

Submitted: March 30, 2001

Decided: June 18, 2001

Before MICHAEL, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Michael Hursey, MICHAEL HURSEY, P.A., Fort Lauderdale, Florida, for Appellant. J. Rene Josey, United States Attorney, A. Bradley Parham, Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Elias Contreras pled guilty to conspiracy to possess with intent to distribute cocaine and cocaine base. His sentencing range was properly calculated as 97 to 121 months and he was sentenced to 120 months imprisonment. Contreras raises two issues on appeal.

First, he alleges that the district court misunderstood its ability to sentence him below the statutory minimum sentence of ten years. We find insufficient factual support for this contention and note that this court will not review a sentencing court's decision as to where to impose a sentence within a properly calculated guideline range. *United States v. Porter*, 909 F.2d 789, 794 (4th Cir. 1990).

Second, because Contreras was sentenced below the statutory maximum, his conviction and sentence are unaffected by *Apprendi v. New Jersey*, 120 S. Ct. 2348 (2000). *See id.* at 2362-63; *see also United States v. Kinter*, 235 F.3d 192, 199-202 (4th Cir. 2000), *cert. denied*, 2001 WL 185105 (U.S. Mar. 19, 2001) (No. 00-8591); *United States v. Lewis*, 235 F.3d 215, 218-19 (4th Cir. 2000).

Accordingly, we affirm the sentence and conviction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED