

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-4369**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ENRIQUE MARTINEZ ORTIZ,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Graham C. Mullen, Senior District Judge. (3:02-cr-00094-11)

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Submitted: May 30, 2007

Decided: July 5, 2007

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Before WILLIAMS, Chief Judge, and WILKINSON and SHEDD, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Charles R. Brewer, Asheville, North Carolina, for Appellant.  
Gretchen C.F. Shappert, United States Attorney, Thomas Cullen, Assistant United States Attorney, Charlotte, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Enrique Martinez Ortiz pled guilty to conspiracy to possess with intent to distribute marijuana, cocaine, and cocaine base, in violation of 21 U.S.C. § 846 (2000), conspiracy to import marijuana into the United States, in violation of 21 U.S.C.A. §§ 952(a), 960, 963 (West 1999 & Supp. 2007), and conspiracy to violate several money laundering statutes, in violation of 18 U.S.C.A. § 1956(h) (West 2000 & Supp. 2007). The district court sentenced Ortiz to concurrent 151-month prison terms on each count. Ortiz timely appeals.

On appeal, Ortiz asserts that the district court failed to adequately consider his objections to the presentence report ("PSR"). Under Rule 32(i)(3)(B) of the Federal Rules of Criminal Procedure, a district court must rule on objections to the PSR or find that a ruling is unnecessary because the disputed matter will not affect sentencing or will not be considered in sentencing. This rule "protect[s] a defendant's due process rights to be sentenced on the basis of accurate information, and facilitates appellate review by furnishing a clear record of the resolution of disputed facts." United States v. McCants, 434 F.3d 557, 562 (D.C. Cir. 2006) (internal quotation marks and citation omitted).

In his written objections to the PSR, Ortiz challenged the three-level increase in offense level under U.S. Sentencing Guidelines Manual ("USSG") § 3B1.1(b) (2004) for his role in the offense. However, at sentencing, Ortiz's counsel conceded that there was sufficient evidence to support the enhancement. Ortiz

also objected to the PSR's finding that he was responsible for 12,742.53 kilograms of marijuana, arguing that he was directly involved with slightly less than 2000 kilograms of marijuana. At sentencing, the government stated that Ortiz should be responsible for only 3400 kilograms of marijuana and the district court sentenced Ortiz based on this lesser quantity. Ortiz could have objected at the sentencing hearing to the district court's determination, but he failed to avail himself of the opportunity. We therefore find that Ortiz cannot now argue that the district court failed to adequately consider his objection.

Accordingly, we affirm Ortiz's sentence. 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