



4. If the government in its sole discretion determines that the defendant has fulfilled his obligation of cooperation as set forth above, at the time of sentencing, the government will:
  - c. Make a motion to allow the court to depart from the Sentencing Guidelines pursuant to Sentencing Guideline § 5K1.1 and to impose a sentence below any mandatory minimum term of imprisonment pursuant to 18 U.S.C. § 3553(e), if the government, in its sole discretion, determines that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense.

3. Prior to the grand jury indictment, both Ramos and Dominguez had been arrested on February 12, 1992 pursuant to a complaint and warrant, after an undercover narcotics investigation implicated them in the purchase of substantial amounts of cocaine.

4. After the arrest, only Dominguez began to cooperate by revealing the name of his supplier, a William Benjumea, as well as a person with the nickname, Beto, during an interview with Special Agent Hadden Randez in March of 1992. An exhibit (Government 1) indicates that the interview took place on March 11, 1992.

5. Ramos had not expressed any desire to cooperate up until the time of the indictment (N.T. 10). Ultimately, he did enter into the plea agreement as referred to in paragraph 2.

6. The only information that Ramos ever gave to the government is set forth in government exhibit 2. This information, given to Agent Hadden on February 12, 1993, was essentially that the only kilograms of cocaine he sold were the two he sold with the assistance of Dominguez and that they had been obtained from Benjumea who he believes is presently out of the country. Ramos testified that he told agents, including Agent Hadden on the day he was arrested, February 12, 1992, that Benjumea was the supplier. I do not believe this testimony. It is contradicted by Agent Hadden's testimony and the only record of any interview with Ramos, Government Exhibit 2. Moreover, Ramos' own affidavit shows his confusion about dates. In that affidavit, he consistently refers to the date of February 12, 1993 as the date of his arrest, and the date he informed Agent Hadden of Benjumea.

7. Dominguez, who had entered a cooperation plea agreement prior to Ramos, was sentenced on February 3, 1993 and the government's 5K1.1 motion was granted. The sentencing of Ramos was continued so that he could have an opportunity to cooperate. (Martir - N.T. 40,41).

8. Ultimately, when Ramos was sentenced, the government did not move for a departure because Ramos had provided no new information, but just the same information that Dominguez had provided (Martir - N.T. 42) a year earlier.

### CONCLUSIONS OF LAW

The government's decision not to file a motion for a sentencing departure was made in good faith. The facts do not support a finding of bad faith on the part of the government. While I am permitted to examine the prosecutor's refusal to file a 5K1.1 motion for "good faith", I cannot interfere with the prosecutorial discretion if it appears that the government's position is based on an honest evaluation of the assistance provided. See United States v. Isaac, 141 F.3d 477 (3d Cir. 1998).

Here, it is clear that the government's evaluation was based on the fact that Ramos' very limited attempt to cooperate was both too little and too late. It was too little because it was the same information given by Dominguez about their supplier without any information as to his whereabouts, and too late because the government had the same information from a year prior to Ramos' revelation. A determination that Ramos did not provide substantial assistance is supported by the facts.

Although defense counsel was able to point out some discrepancies between the government witnesses' testimony and their affidavits, I do not find these discrepancies affect my conclusion that the government has acted in good faith in this case. An inquiry by Ramos' counsel at the time of sentencing would not have disclosed a lack of good faith on the part of the

government. Counsel was not ineffective for failing to raise a meritless issue.

An appropriate order follows.

