

December 16, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-10137
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CYNTHIA FULLER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:03-CR-150-ALL-Y

Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:*

Cynthia Fuller appeals the sentence she received pursuant to her guilty-plea conviction for possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(C). Fuller argues that her sentence of 57 months violates the Eighth Amendment prohibition against cruel and unusual punishment because the enhancement of her sentence for possession of a firearm pursuant to U.S.S.G. § 2D1.1(b)(1) rendered it grossly disproportionate to her offense.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

We review Fuller's objections for plain error because she raises them for the first time on appeal. See United States v. Knowles, 29 F.3d 947, 950-51 (5th Cir. 1994). Fuller's sentence is not grossly disproportionate to her crime and therefore does not violate the Eighth Amendment. See United States v. Gonzales, 121 F.3d 928, 942-44 (5th Cir. 1997).

Fuller also argues for the first time on appeal that the increase of her sentence due to her possession of a firearm was improper under Blakely v. Washington, 124 S. Ct. 2531, 2537 (2004), because that fact was not alleged in the indictment and not found beyond a reasonable doubt by the district court or admitted by her. This contention is foreclosed by United States v. Pineiro, 377 F.3d 464, 473 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263).

AFFIRMED.