

**December 30, 2004**

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-10512  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARVIN CLARENCE PRESLEY

Defendant - Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:93-CR-99-2-K  
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Before KING, Chief Judge, and JONES and DENNIS, Circuit Judges.

PER CURIAM:\*

Marvin Clarence Presley appeals the sentence imposed following the revocation of his supervised release. He argues for the first time on appeal pursuant to Blakely v. Washington, 124 S. Ct. 2531 (2004), and United States v. Williams, 343 F.3d 423 (5<sup>th</sup> Cir.), cert. denied, 124 S. Ct. 966 (2003), that his sentence should not have exceeded one year of imprisonment because his underlying conspiracy conviction was only a Class E felony.

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\* Pursuant to 5<sup>TH</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5<sup>TH</sup> CIR. R. 47.5.4.

Neither Blakely nor Williams, however, plainly supports the determination urged by Presley either that 18 U.S.C. § 3553(b)(1) creates an additional aggravated offense for every offense in the United States Code or that the statutory maximum for purposes of felony classification under 18 U.S.C. § 3559 is the top end of an offender's guideline range, as opposed to the maximum term of imprisonment authorized by the statute. Consequently, Presley has not demonstrated plain error on the part of the district court. See United States v. Vasquez, 216 F.3d 456, 459 (5th Cir. 2000).

AFFIRMED.