

March 6, 2007

Charles R. Fulbruge III  
Clerk

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 06-10807  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-

Appellee,

versus

TIMOTHY S. LEE,

Defendant-

Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:01-CR-15-ALL  
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Before DeMOSS, STEWART and PRADO, Circuit Judges.

PER CURIAM:\*

Timothy S. Lee appeals from the sentence imposed following revocation of his term of supervised release. Lee argues that his 23-month sentence is unreasonable because it is higher than the advisory guidelines sentencing range and because there has been no allegation that he engaged in additional criminal activity. Lee contends that the district court did not provide an adequate explanation for its departure from the advisory sentencing range.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The Government has moved to dismiss the appeal or for summary affirmance on the ground that this court lacks jurisdiction to consider the appeal under 18 U.S.C. § 3742(a)(4). Because Lee cannot prevail on the merits of his appeal, we pretermitt consideration of the jurisdictional issue. *See United States v. Weathersby*, 958 F.2d 65, 66 (5th Cir. 1992). The Government's motion for dismissal of the appeal or for summary affirmance is therefore denied. The Government's alternative request for an extension of time to file an appellate brief is denied as unnecessary.

The district court properly considered the 18 U.S.C. § 3553(a) factors when imposing Lee's sentence. *See United States v. Gonzalez*, 250 F.3d 923, 930 (5th Cir. 2001). The sentence is neither unreasonable nor plainly unreasonable. *See United States v. Hinson*, 429 F.3d 114, 120 (5th Cir. 2005), *cert. denied*, 126 S. Ct. 1804 (2006).

AFFIRMED; MOTION FOR DISMISSAL OR SUMMARY AFFIRMANCE DENIED;  
ALTERNATIVE REQUEST FOR EXTENSION OF TIME DENIED AS UNNECESSARY.