IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 01-50204

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMAAL ISAAC HERRING,

Defendant-Appellant.

Appeal from the United States District Court for
the Western District of Texas
(USDC No. A-00-CR-105-ALL-SS)

September 12, 2001

Before REAVLEY, HIGGINBOTHAM and PARKER, Circuit Judges.

PER CURIAM:*

There has been understandable confusion in the past about whether "controlled substance offense" under Section 2K2.1(a)(2) of the guidelines included a conviction for mere possession of a controlled substance. The law is clear that a crime of violence or

---

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

controlled substance offense "does not include simple possession." United States v. Gaitan, 954 F.2d 1005, 1011 (5th Cir. 1992). Sec. 4B1.2(2).

The PSR erred in the recommendation to this effect, and no objection was made by the defendant. The sentence was therefore the consequence of a mistake.

The sentence is vacated and the cause remanded for resentencing.