

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-10426
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRIAN DAVID BISHOP,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:01-CR-177-4-A

December 10, 2002

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Brian David Bishop appeals the sentence following his guilty plea conviction for using and carrying a firearm during and in relation to a crime of violence in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and (2). He argues that the district court erroneously departed upward by finding by a preponderance of the evidence that Bishop participated in uncharged robberies. The district court properly applied the preponderance standard. See

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Watts, 519 U.S. 148, 157 (1997); United States v. Patten, 40 F.3d 774, 776 (5th Cir. 1994). Moreover, the district court did not abuse its discretion in upwardly departing. See United States v. Ashburn, 38 F.3d 803, 807 (5th Cir. 1994) (en banc).

AFFIRMED.