

February 17, 2004

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 03-10521
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CASSIUS JAMES BROWN, also known as Cass,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:02-CR-00174-6-A

Before HIGGINBOTHAM, EMILIO M. GARZA, and PRADO, Circuit Judges.

PER CURIAM:*

Cassius James Brown appeals the sentence he received in conjunction with his guilty-plea conviction for possession with intent to distribute more than five kilograms of a substance containing cocaine. He asserts that the district court erred in sentencing him as a career offender under U.S.S.G. § 4B1.1 because he had received misdemeanor sentences for his two state jail felony convictions pursuant to a Texas Penal Code provision. Because Brown's guilty plea to a state jail felony exposed him to

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 possibility of a sentence of more than one year in prison, these convictions count as felonies under U.S.S.G. § 4B1.1 despite the fact that Brown received a misdemeanor sentence under TEX. PENAL CODE § 12.44(a). See United States v. Rivera-Perez, 322 F.3d 350, 352 (5th Cir.), cert. denied, 123 S. Ct. 2625 (2003). The judgment of the district court is thus AFFIRMED.