

February 23, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-10773
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VERNARDE COTTON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:88-CR-70-ALL

Before GARZA, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:*

Vernarde Cotton, federal prisoner # 17971-077, appeals the denial of his FED. R. CRIM. P. 35 motion challenging the 30-year probation-revocation sentence imposed pursuant to his bank robbery conviction. He argues pursuant to Benson v. United States, 332 F.2d 288 (5th Cir. 1964), that the district court illegally imposed a "general sentence" in his multi-count conviction.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 record, however, discloses that the 30-year aggregate sentence was not a "general sentence." As was announced in open court on June 10, 1988, the district court ran the 20-year term imposed on count three consecutively with the 10-year term imposed on count two. The district court's denial of Rule 35 relief was therefore neither illegal nor a "gross abuse of discretion." United States v. Sinclair, 1 F.3d 329, 330 (5th Cir. 1993) (internal quotation marks and citation omitted).

Cotton's appeal is without arguable merit and is therefore dismissed as frivolous. See Howard v. King, 707 F.2d 215, 220 (5th Cir. 1983). Cotton is cautioned that future frivolous challenges to his sentence will result in the imposition of sanctions.

APPEAL DISMISSED; SANCTION WARNING ISSUED.