

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-41543
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee-Cross-Appellant,

versus

JESSIE WADE HALE,

Defendant-Appellee-Cross-Appellee.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 6:97-CR-42-3
- - - - -

March 11, 1999

Before POLITZ, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Appellant Jessie Wade Hale appeals his sentence for possession with intent to distribute methamphetamine arguing that the district court erred by attributing 764.45 grams to him when determining his offense level. The Government appeals the district court's failure to sentence Hale as a career offender pursuant to U.S.S.G. § 4B1.1.

We have reviewed the record and briefs submitted by the parties and hold that the district court erred in determining

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

that Hale's two prior felony convictions were related, and thus, holding that Hale was not subject to the career offender guideline. See U.S.S.G. § 4A1.2(a)(2) & comment.(n.3); see also United States v. Ford, 996 F.2d 83, 85 (5th Cir. 1993); United States v. Garcia, 962 F.2d 479, 482 (5th Cir. 1992). Any error with regard to the district court's inclusion of the 764.45 grams of methamphetamine in Hale's offense level is harmless inasmuch as it would not affect Hale's sentence as a career offender pursuant to U.S.S.G. § 4B1.1.

Accordingly, we VACATE Hale's sentence and REMAND for resentencing.

VACATED AND REMANDED.