

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-41405
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

TIMOTHY WAYNE RICHEY,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:99-CR-59

February 5, 2001

Before POLITZ, JOLLY, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Timothy Wayne Richey appeals his sentence after pleading guilty to a single count of receiving a sexually explicit depiction of a minor. He contends that the

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 R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

district court erred in assessing a four-level increase under U.S.S.G. § 2G2.2(b)(3) because the four images offered by the Government to support the increase, which depicted anal penetration of very young minors by adult males, did not portray sadistic or masochistic conduct or other depictions of violence. This argument is foreclosed by our recent decision in United States v. Lyckman,¹

Richey also contends that there was no evidence establishing his intent to possess pictures portraying sadistic or masochistic conduct or other depictions of violence. That contention also is meritless in light of unrebutted statements in the PSR reflecting that Richey had downloaded several images of minors engaged in sexually explicit conduct, including the four images offered by the Government at sentencing, from an Internet news group.²

The judgment appealed is AFFIRMED.

¹ ___ F. 3d ___ (5th Cir. Dec. 7, 2000, No. 99-40982), 2000 WL 1800131 at *2-*4.

²United States v. Kimbrough, 69 F.3d 723, 734 (5th Cir. 1995); United States v. Mir, 919 F.2d 940, 943 (5th Cir. 1990).