

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-10161  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KEVIN LERAY HENDERSON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:99-CR-111-6-P  
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December 14, 2000

Before DAVIS, STEWART, and PARKER, Circuit Judges.

PER CURIAM:\*

Attorney Alexander Calhoun was appointed to represent Kevin Henderson, and he has now moved for leave to withdraw and filed a brief as required by Anders v. California, 386 U.S. 738 (1967). Henderson received a copy of counsel's motion and brief, and has filed a response which discusses a difference between the amount of drugs specified in his indictment and the amount specified in sentencing calculations.

Henderson's argument is frivolous because our recent decisions explain that a fact used in sentencing calculations

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

which does not increase a penalty beyond the statutory maximum need not be alleged in an indictment or proven to a jury beyond a reasonable doubt. See United States v. Keith, \_\_ F.3d \_\_, 2000 WL 1532802 (5th Cir. 2000). In this case, the sentence Henderson received was increased because of the greater amount of drugs, but it was still less than the statutory maximum.

Our independent review of the brief and the record discloses no other non-frivolous issue. Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the APPEAL IS DISMISSED. See 5th Cir. R. 42.2.