

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-10476  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALVIN O'NEAL DAVIS, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:99-CR-276-1-A  
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March 16, 2001

Before JOLLY, SMITH, and DUHÉ, Circuit Judges.

PER CURIAM:<sup>1</sup>

Alvin O'Neal Davis, Jr., appeals his guilty plea conviction for possession with the intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A). Davis argues that the factual basis for his guilty plea was insufficient to support the possession element of the offense. He further contends that, pursuant to Apprendi v. New Jersey, 530 U.S. 466 (2000), the district court erred by failing to admonish Davis at his arraignment that drug quantity was an element of the offense,

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<sup>1</sup> 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

thereby rendering Davis' guilty plea involuntarily made. Davis also asserts that error resulted from the Government's decision against filing a motion for downward departure pursuant to U.S.S.G. § 5K1.1.

We have reviewed the record and briefs submitted by the parties and hold that there was an adequate factual basis to support the possession element of the offense, and that any error committed by the district court in failing to admonish Davis that drug quantity was an element of the offense was harmless. United States v. Marek, 238 F.3d 310 (5th Cir. Jan. 4, 2001, Nos. 98-40568, 98-40955)(en banc), 2001 WL 10561 at \*3; United States v. Cuevas-Andrade, 232 F.3d 440, 443 (5th Cir. 2000). We further hold that, pursuant to the terms of Davis' plea agreement, the Government was not required to file a motion for downward departure. United States v. Aderholt, 87 F.3d 740, 743 (5th Cir. 1996).

AFFIRMED.