

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-40576
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KELVIN LEDAL HORTON,
also known as Kevin,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. G-99-CR-10-11

February 13, 2001

Before SMITH, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Kelvin Ledal Horton appeals his sentence following a guilty-plea conviction for conspiracy to possess with intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), (b)(1)(B), (b)(1)(C) and 846.

Horton argues that the district court erred by adopting the drug amounts contained in the Presentence Report ("PSR") without verifying the accuracy of the quantities. A district court's findings about the quantity of drugs upon which a sentence should

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

be based are factual findings, which this court reviews for clear error. See United States v. Buchanan, 70 F.3d 818, 833 (5th Cir. 1996). As Horton did not present any rebuttal evidence to refute the amounts, the district court properly adopted the PSR facts without further inquiry. See United States v. Sherbak, 950 F.2d 1095, 1099-1100 (5th Cir. 1992). Therefore the district court did not clearly err in determining the quantity of drugs attributable to Horton.

Horton also contends, for the first time on appeal, that the district court prevented him from presenting any rebuttal evidence regarding his objection. This claim is reviewed for plain error. See United States v. Angeles-Mascote, 206 F.3d 529, 530 (5th Cir. 2000). A review of the sentencing transcript reveals, contrary to Horton's assertion, that Horton declined the district court's opportunity to present additional arguments in support of this objection following the presentation of initial arguments by both parties. Accordingly, the district court did not commit plain error. See id. The sentence is AFFIRMED.