

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-60884
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

CUYLER A. DODSON

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:00-CR-85-ALL-BS

August 15, 2001

Before KING, Chief Judge, and DAVIS and EMILIO M. GARZA, Circuit
Judges.

PER CURIAM:*

Cuyler A. Dodson appeals his guilty-plea conviction and sentence for simple possession of crack cocaine. He asserts that the district court erred in holding that he was subject to an enhanced maximum of two years' imprisonment under 21 U.S.C. § 844 because the Government failed to file an information under 21 U.S.C. § 851 giving notice of its intent to use his prior drug conviction for that purpose. Because Dodson did not object to this maximum sentence in the district court, review is for plain

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

error. See United States v. Olano, 507 U.S. 725, 731-37 (1993). Dodson has failed to show that this error "seriously affect[ed] the fairness, integrity, or public reputation" of the proceedings. Id. at 735-36.

Dodson also contends that the district court abused its discretion in departing upward seven levels and in sentencing him to a maximum twenty-four month sentence. He has failed to show that the drug quantity alleged in the indictment and set forth in the presentence report did not bring his case out of the "heartland" of cases involving a smaller drug quantity, which set the basis for the maximum statutory sentence Dodson faced. He also failed to show that the district court's other stated reasons for the upward departure, which included an underrepresented criminal history category, a dismissed felon-in-possession count, and Dodson's disrespect for the law, were not appropriate bases for an upward departure or that the extent of the court's departure was unreasonable. See United States v. Lopez-Escobar, 884 F.2d 170, 173 (5th Cir. 1989); United States v. McDowell, 109 F.3d 214, 219 (5th Cir. 1997).

Dodson contends that the district court erred in denying his motion to suppress the evidence. The district court relied upon a credibility determination to conclude that the stop and arrest of Dodson were proper, that Dodson provided consent to search his vehicle and home, and that Dodson freely and voluntarily waived his rights. This court may not second-guess the district court's findings as to the credibility of witnesses. United States v.

Garza, 118 F.3d 278, 283 (5th Cir. 1997). Dodson's conviction is AFFIRMED.

Dodson has also moved for release pending appeal. This motion is DENIED.

AFFIRMED; MOTION FOR RELEASE PENDING APPEAL DENIED.