

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 01-20359  
Conference Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BERISFORD ALEXANDER HAUZE,

Defendant-Appellant.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-00-CR-700-ALL  
-----

April 11, 2002

Before SMITH, DeMOSS, and PARKER, Circuit Judges.

PER CURIAM:\*

Berisford Alexander Hauze pleaded guilty to conspiracy to possess with intent to distribute more than 100 grams of heroin in connection with his arrest for smuggling heroin into the United States in his digestive tract. Hauze appeals his sentence arguing that the district court was clearly erroneous by including as relevant conduct to his offense an estimate of the amount of heroin he smuggled into the United States on a prior occasion. Hauze does not argue that the prior smuggling activity was not relevant conduct to the offense. Hauze

---

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

acknowledges his confession regarding swallowing 52 pellets of heroin for the smuggling trip. Hauze does not argue that the assumption that those pellets were substantially similar to the pellets seized from him in August 2000 was clearly erroneous.

United States v. Torres, 114 F.3d 520, 527 (5th Cir. 1997).

Contrary to Hauze's argument, the district court's determination of the quantity of drugs is supported by a preponderance of the evidence. United States v. Gaytan, 74 F.3d 545, 558 (5th Cir. 1996).

With respect to Hauze's assertion that the district court erred by denying his motion for a downward departure, we do not have jurisdiction to review the matter because the district court's refusal to depart downward was based on its determination that departure was not warranted on the facts of the case.

United States v. Reyes-Nava, 169 F.3d 278, 280 (5th Cir. 1999);

United States v. Palmer, 122 F.3d 215, 222 (5th Cir. 1997).

AFFIRMED.