

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-20721
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

OWEN FRANKLIN JENSEN, IV,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-00-CR-545-1

July 23, 2002

Before HIGGINBOTHAM, SMITH, and CLEMENT, Circuit Judges.

PER CURIAM:*

Owen Franklin Jensen, IV, appeals his sentence following his guilty-plea conviction for one count of possession with intent to distribute 10 grams or more of a mixture containing a detectable amount of LSD and one count of conspiracy to possess with intent to distribute 10 grams or more of a mixture containing a detectable amount of LSD, violations of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(v), 846. Jensen argues that the district court erred in using the total weight of the liquid in which the LSD was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

suspended to calculate his base offense level. He contends that his base offense level should have been calculated using the weight of the pure LSD only. This court reviews "a district court's interpretation of the sentencing guidelines de novo and its application of the guidelines to the facts for clear error." See United States v. Cho, 136 F.3d 982, 983 (5th Cir. 1998).

After Jensen was sentenced, we decided United States v. Morgan, ___ F.3d ___ (5th Cir. May 23, 2002, No. 01-20500), which presented the same issue that Jensen raises in the instant appeal. In Morgan, we held that "when the controlled substance is LSD contained in a liquid solution, the weight of the pure LSD alone should be used in determining the base offense level under the Guidelines." Id. at 5 (emphasis in original); see also United States v. Keresztury, ___ F.3d ___ (5th Cir. June 5, 2002, No. 01-50909).

In the instant case, the district court erred in using the total weight of the LSD and the liquid to determine Jensen's base offense level. Accordingly, Jensen's sentence is VACATED, and this case is REMANDED for resentencing consistent with Morgan.