

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-21113
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PAUL JESSIE ONTIVEROS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-01-CR-135-1

October 30, 2002

Before DeMOSS, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Paul Jessie Ontiveros appeals from his sentence following his guilty-plea conviction for being a felon in possession of a firearm. Ontiveros argues that his sentence violates Apprendi v. New Jersey, 530 U.S. 466 (2000). Specifically, Ontiveros asserts that the sentencing enhancements resulting in the presentence report's guideline range calculation predisposed the district court to sentence him at the high end of the statutory range.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Ontiveros challenges the district court's authority to impose sentencing enhancements based only upon a finding of a preponderance of the evidence. Because Ontiveros did not raise his Apprendi challenge in the district court, we review for plain error. See United States v. Moreno, 289 F.3d 371, 372 (5th Cir. 2002).

Although Ontiveros' sentencing enhancements resulted in a guideline sentence beyond the statutory range, he was nevertheless sentenced to the ten-year statutory maximum pursuant to 18 U.S.C. § 924(a)(2). Accordingly, there was no Apprendi violation. See United States v. Doggett, 230 F.3d 160, 166 (5th Cir. 2000), cert. denied, 531 U.S. 1177 (2001); United States v. Keith, 230 F.3d 784, 787 (5th Cir. 2000), cert. denied, 531 U.S. 1182 (2001).

AFFIRMED.