

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-30499
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DEMETRIUS RICHARD,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 00-CR-329-ALL

December 12, 2001

Before HIGGINBOTHAM, BARKSDALE, and STEWART, Circuit Judges

PER CURIAM:*

Demetrius Richard appeals his sentence following his guilty-plea conviction of distribution of more than five grams but less than 50 grams of "crack" cocaine. Richard contends that the sentence violated Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), because the drug quantity used to determine the guidelines sentencing range exceeded the drug amount alleged in the indictment.

Richard's plea agreement contains a waiver of his right to appeal his sentence, except on limited grounds, and Richard does

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

not argue against enforcing the waiver. Even without the waiver, however, the appeal has no merit.

Richard's indictment alleged distribution of more than five grams of crack cocaine. The statutory maximum penalty for that offense is 40 years. 21 U.S.C. § 841(b)(1)(B)(iii). Apprendi affords no relief because Richard's 97-month sentence does not exceed the statutory maximum penalty provided for cases involving five grams of crack. See United States v. Doggett, 230 F.3d 160, 166 (5th Cir. 2000), cert. denied, 121 S. Ct. 1152 (2001). Apprendi likewise does not prohibit the trial court "from determining the amount of drugs for relevant conduct purposes under the Sentencing Guidelines." United States v. Keith, 230 F.3d 784, 786-87 (5th Cir. 2000), cert. denied, 121 S. Ct. 1163 (2001).

The judgment of the district court is AFFIRMED.