

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-30376
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DEMARVIN DWIGHT BRACKEN, also known as Pudgy,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 97-CR-60004-1

November 26, 2002

Before DAVIS, DUHÉ, and DeMOSS, Circuit Judges.

PER CURIAM:¹

Demarvin Dewight Bracken ("Bracken") appeals the sentence imposed following his guilty-plea conviction for conspiracy to distribute cocaine. Bracken asserts for the first time on appeal that the district court erred in determining the quantity of crack cocaine for which he was sentenced because the drug quantity included amounts that were distributed prior to Bracken joining the conspiracy.

¹ 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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.

After adopting the determination in the presentence report ("PSR") that Bracken joined the conspiracy in "approximately" June 1995, it was not clear error for the district court to include as relevant conduct drugs distributed in late May 1995. See United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc). Moreover, Bracken offered no evidence to rebut the PSR's finding that he was responsible for conspiring to distribute at least 1.5 kilograms of crack cocaine, the threshold amount which established his base offense level pursuant to U.S.S.G. § 2D1.1(c)(1). Because no rebuttal evidence was offered, the district court was free to adopt the findings in the PSR with respect to drug quantity. See United States v. Vital, 68 F.3d 114, 120 (5th Cir. 1995). Bracken failed to meet his burden of showing that the information contained in the PSR was materially untrue. See United States v. Davis, 76 F.3d 82, 84 (5th Cir. 1996).

AFFIRMED.