

June 24, 2003

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 02-51064  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROY LESTER MITCHELL, JR.,  
also known as Roy Lester Mitchell,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. W-02-CR-42-1  
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Before DeMOSS, DENNIS, and PRADO, Circuit Judges.

PER CURIAM:\*

Roy Lester Mitchell, Jr., appeals the sentence he received following his guilty-plea conviction for being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). The sentence imposed will be upheld unless it was imposed in violation of the law or as a result of an incorrect application of the guidelines; in reviewing the sentence, the district court's fact findings are reviewed for clear error and its legal

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

conclusions are reviewed de novo. United States v. Armstead, 114 F.3d 504, 507 (5th Cir. 1997).

Mitchell argues that the district court erred in assessing a four-point sentencing increase, pursuant to U.S.S.G. § 2K2.1(b)(5), because there was no proof that the gun was possessed in connection with any drug-trafficking crime, particularly because no crack cocaine was found in his home at the time the search warrant was executed. He urges that the record shows that he had the gun to protect his family following an armed robbery of his home.

Contrary to Mitchell's assertions, the record establishes that he was dealing drugs out of his home, as evidenced by the fact that several controlled purchases of crack cocaine were made there, that drug paraphernalia and proceeds were found there, and that Mitchell, despite specifically denying that he dealt in crack cocaine, admitted to possessing drug money and to buying and selling drugs at the street values reflected in the ledgers he kept. That no crack cocaine was actually found at the time of the search is irrelevant. See Armstead, 114 F.3d at 511. Because the gun was kept at Mitchell's residence and could have been used to facilitate his drug trafficking, the four-point enhancement was appropriate. See id. at 507, 512.

Mitchell next asserts that the district court improperly denied his request for a § 5K2.12 downward departure based on the fact that he possessed the gun under duress. He does not contend

that the district court's denial was based on a mistaken belief that it lacked the authority to grant the departure.

Consequently, this issue is not reviewable by this court. See United States v. Yanez-Huerta, 207 F.3d 746, 748 (5th Cir. 2000).

Mitchell has not demonstrated any error in the sentence he received. The district court's judgment is therefore AFFIRMED.