

October 25, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-31228
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MERRICK M. HINES,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:04-CR-50105-01

Before REAVLEY, JOLLY and OWEN, Circuit Judges.

PER CURIAM:*

Merrick M. Hines appeals the sentence imposed following his guilty-plea conviction for being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). He argues that the district court erred in departing upward in sentencing him based on his police arrest record and incident report records. After United States v. Booker, 125 S. Ct. 738 (2005), this court reviews sentences for reasonableness. United States v. Smith, 417 F.3d 483, 491-92 (5th Cir. 2005). The district court based

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

its decision to depart upward on Hines's similar criminal convictions involving the use of a firearm, a juvenile negligent homicide, an old cocaine possession, accessory to murder for which the punishment was too lenient, and Hines's other criminal conduct demonstrating a consistent pattern of criminal behavior. The district court also determined that Hines's criminal history category substantially underrepresented the seriousness of his criminal history and that his criminal history establishes a likelihood that he will commit other crimes in the future. The district court considered the policy statement in U.S.S.G. § 4A1.3 and the factors in 18 U.S.C. § 3553(a). The sentence imposed was reasonable for the reasons given by the district court at the sentencing hearing. See Smith, 417 F.3d at 489. There is nothing in the record to show that the district court would have imposed a lesser sentence under an advisory guidelines scheme. See id. Therefore, the district court's judgment is AFFIRMED.