

March 9, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 05-50532  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JIMMY MACK BELL,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:03-CR-254-4  
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Before SMITH, GARZA, and PRADO, Circuit Judges.

PER CURIAM:\*

Jimmy Mack Bell appeals the sentence imposed following his guilty-plea conviction for conspiracy to manufacture methamphetamine in violation of 21 U.S.C. §§ 841 and 846. Bell argues that the district court clearly erred in not sustaining his objection to the Presentence Report (PSR) concerning the amount of methamphetamine involved in the offense. Bell has not demonstrated that the information contained in the PSR and Agent Chuck Borgeson's testimony was materially untrue, inaccurate, or

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

unreliable. See United States v. Alford, 142 F.3d 825, 831-32 (5th Cir. 1998); United States v. Angulo, 927 F.2d 202, 205 (5th Cir. 1991). Bell has not shown that the district court's determination that the offense involved the equivalent of 12,000 kilograms of marijuana was clearly erroneous. See United States v. Villanueva, 408 F.3d 193, 203 & n.9 (5th Cir.), cert. denied, 126 S. Ct. 268 (2005).

Bell also argues that the district court violated his Sixth Amendment rights by enhancing his sentence based on his possession of a firearm, a fact that was not admitted by him. Although Bell objected to the firearm sentencing enhancement in the district court, he concedes that he did not raise a Sixth Amendment claim in the district court. Therefore, review is limited to plain error. See United States v. Mares, 402 F.3d 511, 520 (5th Cir.), cert. denied, 126 S. Ct. 43 (2005).

Bell has not shown that the district court's enhancement of his sentence based on his possession of a firearm was a "clear and obvious" error. The sentencing hearing was held after the Supreme Court issued its decision in United States v. Booker, 543 U.S. 220, 125 S. Ct. 738 (2005). The district court determined that the enhancement was applicable based on Agent Borgeson's testimony at the sentencing hearing that two individuals, Billy White and Jennifer Blazy, saw Bell in possession of a shotgun in October 2003, when Bell and a codefendant were manufacturing methamphetamine. The district court granted the Government's

motion for a downward departure based on Bell's substantial assistance and imposed 120 months of imprisonment, one month less than the minimum sentence within the applicable guidelines range. Bell has not shown that the district court's enhancement of his sentence based on his firearm possession was based on a misapplication of the Guidelines or was unreasonable. See United States v. Alonzo, \_\_\_F.3d \_\_\_, 2006 WL 39119 at \*3 (5th Cir. Jan. 9, 2006)(No. 05-20130).

AFFIRMED.