

August 30, 2006

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-51537
Summary Calendar

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

DARRYL HENRY

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:05-CR-97-2

Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:*

Darryl Henry appeals the sentence imposed following his guilty-plea conviction of aiding and abetting possession with intent to distribute cocaine base. He argues that the district court erred by denying him an offense level reduction based on his acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1.

This court has previously rejected the argument that because a defendant meets other criteria for acceptance of responsibility he is entitled to a § 3E1.1 reduction despite his use of illicit drugs while on release. See United States v. Flucas, 99 F.3d

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

177, 180 (5th Cir. 1996); United States v. Rickett, 89 F.3d 224, 227 (5th Cir. 1996). In this case, the district court's ruling was based on Henry's continued drug use, as evidenced by urine test results. Additionally, the district court found that Henry's denials regarding his continued drug use were not credible. Given these facts, it cannot be said that the district court's ruling is without foundation. See United States v. Washington, 340 F.3d 222, 227 (5th Cir. 2003). Accordingly, the judgment is AFFIRMED.