

March 14, 2007

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Charles R. Fulbruge III
Clerk

No. 06-10808
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES HARDIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CR-20-3

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:*

James Hardin pleaded guilty to stealing explosive materials in interstate commerce in violation of 18 U.S.C. § 844(k) and was sentenced to 27 months of imprisonment and three years of supervised release. Hardin argues that the district court improperly relied on information he provided in his proffer interview to justify an upward departure. The district court specifically found that the probation officer did not rely on Hardin's proffer-related information to recommend an upward departure. Based on the probation officer's assertions that the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

information obtained from Hardin's co-defendants was independently obtained, the district court's finding was not clearly erroneous. See United States v. Gibson, 48 F.3d 876, 879 (5th Cir. 1995).

Hardin states that the upward departure was unreasonably severe, but he does not brief the unreasonability of the upward departure in his argument. He also argues that his sentence was not in keeping with the actual conduct surrounding the commission of his offense. Hardin's actual offense conduct was addressed in the calculation of his base offense level. The upward departure was based on his other uncharged criminal conduct which the district court concluded was not represented in his criminal history score. Hardin has not made any arguments suggesting that the district court abused its discretion in either its decision to depart or the extent of departure. United States v. Smith, 440 F.3d 704, 707 (5th Cir. 2006).

AFFIRMED.