

**FILED**

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

July 24, 2007

Charles R. Fulbruge III  
Clerk

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No. 06-31003  
Summary Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

KEITH SMITH, also known as Keith Cornell Smith

Defendant-Appellant

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. 2:03-CR-235  
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Before KING, DAVIS, and CLEMENT, Circuit Judges.

PER CURIAM:\*

Keith Smith appeals the sentence imposed on remand following his guilty-plea conviction for conspiracy to possess with intent to distribute cocaine base. He argues that the district court used information protected by an immunity agreement to calculate his sentencing range under the Sentencing Guidelines in violation of U.S.S.G. § 1B1.8.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

The Government argues that Smith's appeal is barred by an appeal waiver included in Smith's written plea agreement. In the absence of the transcripts necessary for a review of the voluntariness of Smith's waiver, this court will not consider this issue. See *Powell v. Estelle*, 959 F.2d 22, 26 (5th Cir. 1992) (party raising an issue has duty to provide the record relating to that issue); *United States v. Dunham Concrete Prods., Inc.*, 475 F.2d 1241, 1251 (5th Cir. 1973) (same).

In view of the evidence presented at the evidentiary hearing on remand, Smith has not shown that the district court clearly erred in finding that the Government established that the evidence used to calculate Smith's offense level was obtained from legitimate, independent sources -- Smith's own admissions prior to the agreement, wiretap evidence, and an interview with an individual who purchased crack cocaine from Smith. See *United States v. Gibson*, 48 F.3d 876, 879 (5th Cir. 1995).

AFFIRMED.