

October 5, 2006

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-60249  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALAN THOMAS MOODY,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. 2:05-CR-89-ALL  
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Before KING, HIGGINBOTHAM, and GARZA, Circuit Judges.

PER CURIAM:\*

Alan Thomas Moody was convicted of armed bank robbery in violation of 18 U.S.C. § 2113(a). Moody appeals his 96-month sentence which included an upward departure. Moody argues that the extent of the district court's upward departure was unreasonable because the departure did not advance the objectives of 18 U.S.C. § 3553(a)(2) and was not justified by the facts of the case.

Pursuant to United States v. Booker, 543 U.S. 220 (2005), this court ultimately reviews sentences for reasonableness.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

United States v. Smith, 440 F.3d 704, 706 (5th Cir. 2006). The sentencing court's factual findings are accepted unless clearly erroneous, and the application of the Guidelines is reviewed de novo. Id.

The district court based its decision to upwardly depart on permissible grounds including Moody's prior convictions for numerous offenses for which he was not assessed criminal history points. See U.S.S.G. § 4A1.3(a)(2)(A) and (B); § 4A1.2, comment. (n.8); § 4A1.2(e); United States v. Simkanin, 420 F.3d 397, 416 n.21 (5th Cir. 2005), cert. denied, 126 S. Ct. 1911 (2006). In so departing, the court considered the nature of Moody's convictions as required under § 4A1.3, when it stated that its imposed sentence was based not only on the number of Moody's prior convictions, but on the facts that his convictions for armed robbery, bank robbery, and possession of a firearm by a convicted felon indicated a recurring pattern of criminal behavior that had begun in 1968 and that, of Moody's five prior felony convictions, two were violent felonies. See § 4A1.3, comment. (n.2(B)). Also, the district court's comments reflect § 3553(a)'s requirement to consider the seriousness of the offense, the need for punishment, deterrence, and protection from future crimes by Moody.

Moreover, the degree of the upward departure, which resulted in a guidelines range 100% greater than Moody's guidelines maximum, was reasonable. See United States v. Lambert, 984 F.2d

658, 663-64 (5th Cir. 1993) (en banc); Simkanin, 420 F.3d at 416 n.21. Accordingly, the district court's upward departure was not an abuse of discretion and Moody's sentence was reasonable. See Smith, 440 F.3d at 706. Moody's sentence is AFFIRMED.