

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

June 7, 2010

Lyle W. Cayce
Clerk

No. 09-60798

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MERLIN W. WINTERS,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:08-CR-60-1

Before GARZA, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Merlin W. Winters appeals the 36-month sentence imposed by the district court as unreasonable. Winters's sole argument on appeal is that the sentence was unreasonable in light of Winters's need for treatment for drug addiction. As he did not preserve his objection to the sentence, however, we review for plain error. *See United States v. Hernandez-Martinez*, 485 F.3d 270, 274 (5th Cir. 2007). Finding none, we affirm.

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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 record demonstrated, and counsel argued, that Winters has a serious drug addiction. The court concluded that a lengthy period of incarceration would permit Winters to have access to the 500-hour drug rehabilitation program available through the Bureau of Prisons. The court was motivated by a desire to ensure that Winters had sufficient opportunity to overcome his addiction and return from prison a productive member of society. This was an appropriate factor to consider in assessing the sentence. *See United States v. Pena*, 125 F.3d 285, 288 (5th Cir. 1997); 18 U.S.C. § 3553(a). Further, the sentence was well below the statutory maximum of five years, which “strongly counsels against its being held reversible on plain error review.” *Hernandez-Martinez*, 485 F.3d at 274.

AFFIRMED.