

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 91-6310  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILLARD TIMOTHY MOORE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CR-91-00160-01-S

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(January 22, 1993)

Before GARWOOD, SMITH, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

The 33 month sentence imposed on Moore for the instant offense was within the specified guideline range, was not a violation of the law and was not imposed as the result of an incorrect application of the guidelines. See United States v. Mejia-Orosco, 867 F.2d 216, 218 (5th Cir.), cert. denied, 492 U.S. 924 (1989). Moore has not challenged either the offense level or criminal history category used to determine the applicable guideline range, 27 to 33 months of imprisonment.

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Moore's complaint is that the district court improperly imposed the 33-month sentence consecutively to the 24 months imposed in the revocation of supervised release from a prior conviction. The sentence of 57 months of imprisonment was 15 months less than the 72 months total sentence requested at rearraignment.

It is undisputed that Moore did not object to his sentence at the time it was handed out and as such the district court's actions will only be reviewed for plain error, as Moore concedes. United States v. Ayers, 946 F.2d 1127, 1131 (5th Cir. 1991). "Plain error is error which, when examined in the context of the entire case, is so obvious and substantial that failure to notice and correct it would affect the fairness, integrity, or public reputation of the judicial proceedings." Id.

The guidelines recommend that a sentence imposed for revocation of supervised release be served consecutively to other sentences. U.S.S.G. § 7B1.3(f). Further, the district court reasoned, and defense counsel conceded, that an upward departure from the 33 month sentence, as was recommended by the presentence report, could have been supported. Finally, the record shows that Moore bargained for a sentence which was much less than he could have received based on the facts of the offense. Further, he was sentenced to much less time than he had bargained for. Under these circumstances, the district court did not commit plain error in imposing sentence on Moore. See Ayers, 946 F.2d at 1131. The conviction and sentence are AFFIRMED.