

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-1391
Conference Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

VERSUS

PATRICK BOUVIER GREEN,
Defendant-Appellant.

On Remand from the Supreme Court
of the United States
(CR3-91-306-R)

(April 5, 1994)

Before KING, DAVIS and SMITH, Circuit Judges.

PER CURIAM:¹

Appellant in this case was convicted of conspiracy to distribute cocaine and with aiding and abetting the distribution of cocaine. Although his co-conspirators were involved with cocaine base sometime before he joined the conspiracy, the district court acknowledged that the evidence did not tie Green to the cocaine base. The district court computed the guideline sentence to which Green would ordinarily be subject at thirty-three to forty-one

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

months. The court concluded, however, that it was required to impose a sixty-month sentence because Green was subject to the mandatory minimum provisions of 21 U.S.C. § 846. The district court accordingly imposed a sixty-month sentence. We affirmed that sentence.

On writ of certiorari to the Supreme Court the government argued that 21 U.S.C. § 846's mandatory sentence provisions do not apply to Green because Green was not involved directly with cocaine base nor was he a member of the conspiracy when his co-conspirators distributed cocaine base. The government argued that the sentence, therefore, should be vacated and the case remanded for resentencing. The Supreme Court remanded the case to us to reconsider in light of the government's change of position.

We agree with the government that the sixty-month mandatory minimum provisions of 21 U.S.C. § 846 do not apply to Green because he was not involved directly with the cocaine base and was not a member of the conspiracy when his co-conspirators were involved with cocaine base. Accordingly, the sentence of the district court is vacated and the case is remanded for resentencing.

VACATED and REMANDED.