

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1423  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CURTIS QUINCY BROWN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
CR4 91 138 A (1)

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March 22, 1993

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

EDITH H. JONES, Circuit Judge:\*

Appellant Curtis Quincy Brown challenges his 180 month sentence of imprisonment following his guilty plea to one count of bank robbery. We find no error and affirm.

Brown first challenges the district court's finding that he possessed a dangerous weapon during the robbery for which he was convicted -- a finding that caused a three-level increase in his

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

base offense level. The district court made a factual finding that Brown possessed a firearm during the robbery, because the victim bank teller said that Brown gave her a note that read, "Give me the money, I have a gun." Although the teller did not see a weapon, Brown possessed a .32 caliber firearm when he was arrested two months later. Brown later denied he possessed a firearm during the robbery, but the court was not required to accept his self-serving statement, and its finding that he possessed a firearm is not clearly erroneous. The cases Brown cites in his support are factually distinguishable and therefore not controlling.

Brown next complains that the district court erroneously founded its upward departure on nine "uncharged, unindicted, [and] unarrested events," convenience store robberies to which Brown confessed at the time of his arrest. He also challenges the district court's methodology in awarding a 180-month sentence that was nearly three times the Guidelines prescription. In the first complaint, Brown simply errs. Section 4A1.3(e) specifically allows "prior similar adult criminal conduct not resulting in a criminal conviction" as a basis for upward departure if it is reliable and not adequately reflected in the criminal history. See, e.g., United States v. Miller, 903 F.2d 341, 350 (5th Cir. 1990). There is no question that the information concerning Brown's convenient store robberies was reliable, because he supplied it.

Brown urges, however, that the convenience store robberies are not "criminal history," because they occurred within the same time period as his bank robberies. Despite the PSR's

description of the incidents in toto as a "crime spree" we do not agree that they are ineligible to support an upward departure based on Brown's criminal history. Unlike the facts of the case on which Brown relies, United States v. Coe, 891 F.2d 405, 409-10 (2d Cir. 1989), the convenience store robberies were not a series of crimes "similar" to his bank robberies. Moreover, the court in Coe held that, under U.S.S.G. § 4A1.3, even other similar robberies committed within a two-week span could be used as the basis for an anti-recidivism upward departure. 891 F.2d at 412.<sup>1</sup>

Further, the court's reasons for and extent of departure were adequately expressed under our recent en banc decision in United States v. Lambert, 1993 WL 35719 (5th Cir. Feb. 16, 1993). As the district court recognized, had defendant's criminal history score reflected the nine convenient store robberies, it would have been at least a Level VI. The court found this string of robberies to have a significant effect on Brown's criminal history, and we agree. The court's ruling implicitly demonstrates the step-by-step approach to criminal history departures that this court approved in Lambert. Finally, the reasonableness of the sentence is underscored by the fact that Brown's 180 month sentence remains considerably lower than the 20 year statutory maximum for bank robbery. 18 U.S.C. § 2113(a). The court's upward departure did not constitute a "gross abuse of discretion." United States v. Perez, 915 F.2d 947, 948 (5th Cir. 1990). The court offered

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"acceptable reasons," for the departure, and the departure was "reasonable." Id.

The judgment of the district court is AFFIRMED.