

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1654
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

BRADLEY HUFF,

Defendant-Appellant.

Appeal from the United States District Court
For the Northern District of Texas
(2:92-CR-17(01))

(December 29, 1992)

Before POLITZ, Chief Judge, GARWOOD and SMITH, Circuit Judges.

PER CURIAM:*

Bradley Huff appeals his sentence on a conviction for being an accessory after the fact in violation of 18 U.S.C. § 3. Huff claims that the court imposed overly restrictive terms on his supervised release and failed to provide him with a departure notice or give an explanation for imposing a fine equal to five

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

times the maximum authorized by the sentencing guidelines. We affirm the terms of supervised release but vacate and remand for resentencing on the fine.

Background

Huff was convicted of having assisted his father in the offense of failure to appear. Huff admitted that he knew his father was released on bond for a felony indictment. He also admitted knowledge of his father's attempt to avoid process in violation of 18 U.S.C. § 3146(a)(1). Finally, he admitted that he received, comforted, and materially assisted his father in order to prevent his father's capture. Huff took several affirmative steps to aid his father's flight, including assisting his efforts to solicit funds and to obtain license plates for use in his escape.

Huff pleaded guilty; the government eschewed further prosecution. At the sentencing hearing the court determined that the guidelines provided a range of imprisonment between 0 and 6 months, supervised release between 2 and 3 years, and a fine of between \$250 to \$5000. The court assessed a term of supervised release during which Huff was not to engage in the solicitation of funds for any organization and imposed a fine of \$25,000.

Analysis

Huff contends that the district court erred in prohibiting him from conducting any solicitation of funds during his supervised release. Such a restriction does not amount to a departure from

the sentencing guidelines if it falls within the range of conditions available to the court under the guidelines.¹ The guidelines provide the sentencing court with broad authority to impose conditions of supervised release reasonably related to the nature and circumstances of the offense and the need to protect the public by deterring further criminal conduct.² Considering that Huff's father was engaged in fraudulent solicitation activity and that Huff admitted he brought his father a federal express package containing such solicited checks to assist his escape, we find the condition appropriate and perceive no error in its imposition.

The assessing of a fine equal to five times the guideline maximum constitutes an upward departure. Before the sentencing court may render a sentence in excess of the guideline range, it must provide notice of its intention to depart.³ Moreover, the sentencing court may depart from the sentence authorized under the guidelines only upon finding "aggravating or mitigating circumstances of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission."⁴ Such a departure

¹ **United States v. Mills**, 959 F.2d 516 (5th Cir. 1992).

² U.S.S.G. § 5D1.3(b).

³ **United States v. Burns**, 111 S.Ct. 2182 (1991); **United States v. Otero**, 868 F.2d 1412 (5th Cir. 1989).

⁴ 18 U.S.C. § 3553(b).

must also be explained.⁵ We have held that a reference to "the serious nature of the offense," standing alone, is an insufficient explanation for an upward departure.⁶ In the instant case the district court provided no notice of its intention to depart from the guidelines and stated only that it imposed the fine "due to the nature of the offense." More is required.

The sentence is AFFIRMED as it relates to the conditions of supervised release but it is VACATED and REMANDED as relates to the fine imposed.

⁵ **Id.** at § 3553(c)(2).

⁶ **United States v. Shaw**, 891 F.2d 528 (5th Cir. 1989).