

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1756
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ODELL HARMON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(CR3-92-009-P)

(December 1, 1993)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

PER CURIAM:

Appellant Odell Harmon was sentenced to 25 years imprisonment and other penalties after he pled guilty to one count of distributing crack cocaine in and around Dallas, Texas. On appeal, he challenges factual determinations made by the district court in the course of sentencing, all of which are reviewed on appeal under the clearly erroneous standard. United States v.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Chavez, 947 F.2d 742, 746 (5th Cir. 1991). We find no error and affirm.

Harmon's most consequential challenge is to the quantity of drugs used to determine his base offense level. He argues that the 98 grams of crack seized by police in a January 1, 1991, raid of the Nomas Street properties, allegedly before he took over his brother's role as leader of the distribution ring, should not have been included in the calculation of his sentence. The court had the authority to consider quantities of drugs not specified in the count of conviction, and it may consider amounts that were part of a common scheme or plan. U.S. v. Mitchell, 964 F.2d 454, 458 (5th Cir. 1992). The district court included the 98 grams of crack seized in the January 1, 1991 raid as relevant conduct, even though the conspiracy count was dismissed, because it accepted the PSR's evidence connecting Harmon to the entire drug operation run out of the Nomas Street properties at that time by Harmon's brother. Harmon's factual resume accompanying his guilty plea specifically states that he "committed acts in furtherance of the conspiracy [from at least January 1, 1991 to on or about January 7, 1992] in the Dallas, Texas area." The district court could have determined that whether Harmon was on the premises during the January 1, 1991 raid -- the government first said he was, but then backtracked -- was not as important as his overall connection to the operation in his brother's hands, a fact to which the PSR and the factual resume attested.

Harmon also alleges that the district court should not have increased his base offense level for possession of a firearm, should have granted a two-level reduction for acceptance of responsibility, and should not have given him a four-level increase for his role as an organizer or leader in the offense. The PSR's information, some of which came from Harmon himself, supported each of the district court's determinations. We do not find them clearly erroneous.

The sentence is **AFFIRMED**.