

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1777
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JIMMY LEE WASHINGTON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. CR-5-88-055
- - - - -

March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Jimmy Lee Washington appeals the revocation of his five-year supervised release term based on the district court's finding that he was in possession of a controlled substance, in violation of the conditions of his release. Washington contests whether a finding of possession of a controlled substance can be based solely on a positive laboratory analysis for drug use.

The provisions of 18 U.S.C. § 3583(g) mandate that if a defendant is found in possession of a controlled substance, the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

court shall terminate the term of supervised release and require the defendant to serve in prison a minimum of one-third of the term of supervised release. The appellate court reviews a district court's interpretation of statutes and guidelines de novo. United States v. Headrick, 963 F.2d 777, 779 (5th Cir. 1992).

In United States v. Kindred, 918 F.2d 485 (5th Cir. 1990), the Fifth Circuit, determined that based on the probation officer's testimony regarding the positive urinalysis report, the evidence overwhelmingly established that Kindred was in possession of a controlled substance and his supervised release term was properly revoked. Id. at 488. The Fifth Circuit has also held that an admission by the defendant corroborating the positive laboratory analyses is not required. United States v. Courtney, 979 F.2d 45 (5th Cir. 1992). The Court in Courtney recently noted that use is not a defense to a simple possession offense and that use is subsumed in possession. "[O]nce the court finds a substance has been voluntarily and knowingly ingested, then, ... it necessarily follows that the defendant has possessed the substance." Id. Accordingly, the trial court did not err in concluding that Washington had been in possession of a controlled substance based on the positive specimen analyses indicating cocaine usage; therefore, the revocation of the supervised release term is AFFIRMED.