

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1967
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEE ANDREW DAVIS, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:89-CR-152-G
- - - - -

June 22, 1993

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

Lee Andrew Davis, Jr., argues that the sentencing judge erred by sentencing him to 24 months imprisonment because U.S.S.G. § 7B1.4(a), p.s. of the sentencing guidelines recommends a sentence of 6 to 12 months imprisonment. He is incorrect.

Our recent decision in United States v. Headrick, 963 F.2d 777 (5th Cir. 1992) is indistinguishable from Davis's case and clearly refutes his argument. In Headrick, the defendant was sentenced to one year of imprisonment followed by three years of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

supervised release. Headrick, 963 F.2d at 778. While on supervised release, the defendant tested positive for cocaine and other controlled substances on several occasions. Id. The sentencing judge revoked Headrick's supervised release, rejected the 12-to 18 month guideline range recommended by § 7B1.1(a), p.s., and sentenced him to the statutory maximum of 24 months imprisonment Id. at 778-79.

We upheld the 24-month sentence because: (1) the policy statement was advisory, rather than mandatory in nature; (2) the sentencing judge considered the policy statements and rejected them in the light of other relevant factors (including the defendant's failure to deal with controlled-substance addiction); and (3) the sentence was not unreasonable. Id. at 780, 782 & 783. Davis's appeal is on all fours with Headrick. In Davis's case: (1) the guidelines recommended a sentence of 6 to 12 months; (2) the sentencing judge noted the guideline range, but rejected the recommendation; (3) the sentence imposed was the statutory maximum of 24 months; and (4) the inability of the defendant to meet the substance abuse clause of the terms of supervised release was a factor in the length of imprisonment.

The decision of the district court is AFFIRMED.