UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5240
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

DAVID BRIAN PUGH,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
(6:92-CR-26(01))

June 3, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

David Brian Pugh appeals his sentence, contending only that the district court erred in not finding sets of his prior offenses "related" for assessing his criminal history, pursuant to United States Sentencing Guideline (USSG) § 4A1.2. We **AFFIRM**.

I.

Pugh pleaded guilty to making a false statement in the purchase of a firearm, in violation of 18 U.S.C. § 922(a)(6). The

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[1] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

probation officer calculated his criminal history based on 14 prior sentences for misdemeanor theft, felony theft, theft by check and theft of a firearm, each against a different victim. The offense dates ranged from early June 1988, to early January 1991. Pugh was not arrested after each offense; it appears that the arrests were after the fifth, ninth and fourteenth offense. Concluding that the sentences were not related, the probation officer assigned 34 criminal history points.[2] Pugh objected to the above calculation. In response, the probation officer removed one point for one of the misdemeanor thefts. The district court adopted the presentence report and sentenced Pugh accordingly.[3]

II.

Section 4A1.2(a)(2) provides that for purposes of computing a defendant's criminal history, "[p]rior sentences imposed in related cases are to be treated as one sentence ...." The application note to § 4A1.2 states that "prior sentences are considered related if they resulted from offenses that (1) occurred on the same occasion, (2) were part of a single common scheme or plan, or (3) were consolidated for trial or sentencing". U.S.S.G. § 4A1.2 comment (n.3).

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[2] In addition, the probation officer assigned two points under U.S.S.G. § 4A1.1(d) because the instant offense occurred while Pugh was on parole, and one point under U.S.S.G. § 4A1.1(e) because the offense occurred within two years of release from imprisonment. Accordingly, 37 points were assigned.

[3] Based on an offense level of 12 and a criminal history category of VI (because the criminal history points exceeded 13), Pugh was sentenced, *inter alia*, to 36 months imprisonment.

Pugh contends that the court erred by failing to divide his prior offenses into two groups of related cases, with three points assigned to each group. According to Pugh, his prior offenses were related because they were part of a common scheme to defraud by the use of worthless checks, or, alternatively, were consolidated for trial. We review *de novo* the application of § 4A1.2. ***United States v. Garcia***, 962 F.2d 479, 481 (5th Cir.), *cert. denied*, ___ U.S. ___, 113 S.Ct. 293 (1992).

A.

Pugh's contention that his offenses "were part of a single scheme or plan" because they involved similar criminal conduct, that is, theft by the use of "hot checks", is foreclosed by ***Garcia***. There we refused to conclude that commission of the same offense on different occasions, without more, conforms to the definition of "common scheme or plan", noting that "`a relatedness finding requires more than mere similarity of crimes'". 962 F.2d at 482 (quoting ***United States v. Brown***, 962 F.2d 560, 564 (7th Cir. 1992)). Accordingly, we rejected the contention that, because two heroin deliveries involved almost identical conduct and occurred within the same area and within days of each other, they were "related". ***Id.*** Pugh's contention similarly fails.

B.

We also reject the alternative assertion that the cases were "consolidated for trial and sentencing" into two sets and therefore the cases within each set are related. The sentences at issue proceeded to sentencing under separate docket numbers, and there

was no order of consolidation. These factors are a "significant indication that the cases were not consolidated". ***United States v. Ainsworth***, 932 F.2d 358, 361 (5th Cir.), *cert. denied*, ___ U.S. ____, 112 S.Ct. 346 (1991).

Moreover, although for each group of offenses, some of the sentences were imposed on the same day, and were made to run concurrently, we do not treat any of the sentences as consolidated for guideline purposes "absent a showing of a close factual relationship between the convictions". ***United States v. Paulk***, 917 F.2d 879, 884 (5th Cir. 1990). Pugh maintains that a close factual relationship exists because all the offenses involved check charges. Again, we disagree. The offenses occurred over a period of two and one half years and involved the purchase of various items, from groceries to computers, from different sources in different locations. Simply because each offense involved the use of a "hot check" does not establish close factual similarity. *See* ***United States v. Metcalf***, 898 F.2d 43, 45-46 (5th Cir. 1990) (holding burglary of a dry cleaning establishment and burglary of an automobile were "not factually tied in any way"). Accordingly, we conclude that the claimed two sets of cases were not respectively consolidated.

III.

For the foregoing reasons, the district court did not err in calculating Pugh's criminal history. Accordingly, the judgment of the district court is

AFFIRMED.