

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7227
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

FRED RATLIFF LEAL,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. B-91-CR-127(2)
- - - - -

March 16, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

After a probation revocation, a district court may impose any other sentence available at the time of the initial sentencing. United States v. Williams, 961 F.2d 1185, 1187 (5th Cir. 1992); see 18 U.S.C. § 3565(a)(2). The original presentence report (PSR) reflects that the probation officer considered 200 pounds of marihuana to calculate a total offense level of 27 because the drug negotiation was for that amount. See U.S.S.G. § 2D1.4(a). The PSR further reflects that appellant, Fred

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Ratliff Leal, received a criminal history category of II. These calculations yielded a sentencing range of 78 to 97 months. Because the range exceeded the maximum imprisonment term of five years prescribed by statute, the statutory maximum became the guideline sentence. See U.S.S.G. § 5G1.1(a).

At the sentencing hearing, the court stated that it adopted "all justifications" included in the PSR. The written judgment, however, reflects an offense level of 15 and a criminal history category of II. Because the oral and written pronouncements of sentence vary, the oral pronouncements prevail. See United States v. Shaw, 920 F.2d 1225, 1231 (5th Cir.), cert. denied, ___ U.S. ___, 111 S. Ct. 2038 (1991). Therefore, the district court's determinations regarding the offense level and Leal's criminal history category are those of the PSR and not those specified in the written judgment.

Because a five-year prison sentence was available at the initial sentencing, it was also available after the probation revocation. Leal, therefore, has failed to show any error.

AFFIRMED.