

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-7737  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CALVIN B. BARBER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Mississippi  
USDC No. CR-G90-43-S  
- - - - -

June 24, 1993

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

PER CURIAM:\*

Calvin Barber contends that the district court erred in determining that he committed a grade A violation of supervised release as defined by U.S.S.G. § 7B1.1, p.s. He maintains that he committed only a grade B violation.

Determinations by a district court relative to sentencing matters are findings of fact subject to the "clearly erroneous" standard of review. United States v. Alfaro, 919 F.2d 962, 964 (5th Cir. 1990).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

At the revocation hearing, the probation officer assigned to the case testified that on August 1, 1991, Barber was arrested in possession of approximately 500 grams of cocaine while traveling on a bus. Law enforcement officials had reason to believe that drugs were on the bus. Barber was found in possession of a claim ticket to the piece of luggage that contained the cocaine. Barber presented no evidence to rebut that testimony.

U.S.S.G. § 7B1.1(a) (1), p.s., defines a grade A violation of supervised release as, inter alia, "conduct constituting . . . a controlled substance offense. . . ." A grade B violation is defined as "conduct constituting any other federal, state, or local offense punishable by a term of imprisonment exceeding one year." U.S.S.G. § 7B1.1, p.s., comment. (n.1) states that "[t]he grade of violation does not depend on the conduct that is the subject of criminal charges or of which the defendant is convicted in a criminal proceeding. Rather, the grade of violation is to be based on the defendant's actual conduct."

Based on the probation officer's uncontroverted testimony, Barber's actual conduct included possessing a baggage claim ticket to a piece of luggage which contained over 500 grams of cocaine. Possession of cocaine is a drug-related offense, and thus the district court did not commit clear error in finding that Barber committed a grade A violation.

AFFIRMED.