

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-9511
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ALBERT JOHN COX,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-92-242 "A"

- - - - -
June 23, 1993

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

PER CURIAM:*

The Sentencing Guidelines state that the Sentencing Commission "has not dealt with the single acts of aberrant behavior that may still justify probation at higher offense levels through departures." U.S.S.G. Ch. 1, Pt. A, intro. comment. 4(d). While the Guidelines do not define the term "aberrant behavior," this Court has concluded "that it requires more than an act which is merely a first offense or 'out of character' for the defendant." United States v. Williams, 974 F.2d 25, 26 (5th Cir. 1992), cert. denied, 113 S.Ct. 1320 (1993).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The Williams court quoted the definition of aberrant behavior provided by the Seventh Circuit in United States v. Carey, 895 F.2d 318, 325 (7th Cir. 1990).

[T]here must be some element of abnormal or exceptional behavior A single act of aberrant behavior . . . generally contemplates a spontaneous and seemingly thoughtless act rather than one which was the result of substantial planning because an act which occurs suddenly and is not the result of a continued reflective process is one for which the defendant may be arguably less accountable.

Williams, 974 F.2d at 26-27.

In the instant case, as in Williams, the district court's determination that Cox's behavior could not be characterized as aberrant is not clearly erroneous. As the court pointed out, Cox had ample opportunity to plan the bank robbery during the drive between Mississippi and Slidell. Furthermore, he entered the bank with a demand note and carrying an object that appeared to be a gun. Thus, as Cox's conduct was neither spontaneous nor thoughtless, his sentence is AFFIRMED.