

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-1002  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

DWIGHT HUDSON MARTIN,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. (CA4-92-429-K) CR4-83-62-K-4  
- - - - -

June 22, 1993

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

PER CURIAM:\*

Dwight Hudson Martin appeals the denial of his third 28 U.S.C. § 2255 motion to vacate, set aside, or correct his sentence. He argues that the district court imposed a term of special parole on him as part of his sentence in violation of the Supreme Court's decision in Bifulco v. United States, 447 U.S. 381, 100 S.Ct. 2247, 65 L.Ed.2d 205 (1980). In Bifulco, the Court held that 21 U.S.C. § 846 authorized only punishment by fine or imprisonment and did not authorize special parole terms. Bifulco, 447 U.S. at 387-91.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Martin's argument fails because he was not convicted under 21 U.S.C. § 846. He entered a guilty plea to count two of the indictment, which charged him with possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1). In addition, the special parole term imposed upon Martin was also proper under 21 U.S.C. § 841.

Penalties for violations of § 841(a) are prescribed in § 841(b). Prior to 1984, § 841(b)(1)(A) prescribed the penalty applicable to diverse offenses involving cocaine, and required trial courts to impose a special parole term of not less than three years for any violation. United States v. Robles-Pantoya, 887 F.2d 1250, 1258 (5th Cir. 1989) (citing Comprehensive Drug Abuse and Control Act of 1970, Pub.L. 91-513, § 401, 84 Stat. 1236, 1260). Martin committed his offense of conviction in October 1982. The district court's imposition of a special parole term on Martin was therefore proper under the statute of conviction, and the denial of the § 2255 motion is AFFIRMED.

Martin's additional motions for appointment of counsel and leave to file an untimely reply brief, as well as the Government's motion to dismiss the appeal, are all DENIED.