UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-1376
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARRY HALE HENDERSON,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(4-92-CR-187-A)

(January 20, 1994)

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

PER CURIAM:[*]

Larry Hale Henderson pled guilty to possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) and was sentenced to prison for 135 months. He appeals, claiming a deprivation of due process of law because the court used the quantity of pure methamphetamine found in his possession in the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

calculus of his sentence. We affirm.

The Sentencing Guidelines grade methamphetamine offenses in two alternate ways: by the quantity of pure methamphetamine involved or by the quantity of the mixture containing methamphetamine.[1] An offense will be classified at Level 34, for example, if it involves either 300 grams to one kilogram of pure methamphetamine or three to ten kilograms of a substance containing methamphetamine. That was the offense level computed for Henderson, who was found with 425.9 grams of substances containing 382.5 grams of actual methamphetamine. Had his offense been classified by the total weight of the substance rather than the amount of pure methamphetamine, he would have been assigned an offense level of 28. The district court, however, faithfully applied U.S.S.G. § 2D1.1, which directs:

> In the case of a mixture or substance containing PCP or methamphetamine, use the offense level determined by the entire weight of the mixture or substance, or the offense level determined by the weight of the PCP (actual) or methamphetamine (actual), whichever is greater.[2]

Henderson contends that there is no rational basis for assessing punishment on the basis of the amount of actual methamphetamine. A sentence satisfies substantive due process scrutiny unless it is shown to be arbitrary, that is, lacking in a rational relationship to a legitimate congressional goal.[3] Such is not the situation at bar. It is the methamphetamine, not the

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[1]U.S.S.G. § 2D1.1, Drug Quantity Table.

[2]Emphasis added.

[3]**Chapman v. United States**, 111 S.Ct. 1919 (1991).

accompanying manufacturing byproducts, that Congress sought to suppress. To dovetail the severity of sentence with the quantity of the targeted substance is patently reasonable.

Finally, Henderson invokes the Guidelines commentary concerning upward departures for mixtures of unusually high purity,[4] challenging the application of the commentary's observation that the purity of the substance may be related to the defendant's rung on the distribution chain. That commentary is totally inapposite to the issue presented herein for it specifically notes that it does not apply to methamphetamine.[5]

AFFIRMED.

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[4]U.S.S.G. § 2D1.1, Commentary, note 9.

[5]Id, providing in pertinent part that "[t]rafficking in controlled substances . . .of unusually high purity may warrant an upward departure except in the case of . . . methamphetamine. . . ."