

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1570
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WANDA SUE TAYLOR,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CR-101 A (01)

- - - - -
(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit
Judges.

PER CURIAM:*

Wanda Sue Taylor appeals her sentence for misprision of
felony. She contends that her various prior state-law
convictions were consolidated for sentencing into two convictions
for purposes of calculating her criminal history score.

When calculating a defendant's criminal history score, a
sentencing court should "[a]dd 3 points for each prior sentence
of imprisonment exceeding one year and one month." U.S.S.G.
§ 4A1.1(a). "Prior sentences in unrelated cases are to be

* 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that this opinion should not be published.

counted separately. Prior sentences imposed in related cases are to be treated as one sentence for purposes of § 4A1.1(a), (b), and (c)." § 4A1.2(a)(2). "[P]rior sentences are considered related if they [inter alia] were consolidated for trial or sentencing." § 4A1.2, comment. (n.3).

We review relatedness determinations de novo. United States v. Fitzhugh, 984 F.2d 143, 147 (5th Cir.), cert. denied, 114 S.Ct. 259 (1993). "A court should not assume that otherwise distinct cases involving sentencing on the same day were consolidated." United States v. Bryant, 991 F.2d 171, 176 (5th Cir. 1993). The fact of concurrent sentences, by itself, does not necessitate a finding of consolidation. Nor does sentencing on distinct cases on the same day. United States v. Garcia, 962 F.2d 479, 482 (5th Cir.)(Texas state-court convictions), cert. denied, 113 S.Ct. 293 (1992).

Counsel conceded at sentencing that Taylor's prior cases were not consolidated formally. Merely because they resulted in two groups of concurrent sentences does not necessitate finding that they were consolidated into two prior convictions for purposes of calculating Taylor's criminal history score. Nor does the fact that Taylor was sentenced on the same date in 1976 for 11 separate cases necessitate finding that those sentences were consolidated.

This appeal borders on being frivolous. We caution counsel. Counsel is subject to sanctions. Counsel has no duty to bring frivolous appeals; the opposite is true. See United States v. Burleson, ___ F.3d ___, (5th Cir. May 18, 1994, No. 93-2619).

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AFFIRMED.