

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1602
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES HARRIS RAHE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 7:92-CR-025-K
- - - - -
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

Charles Harris Rahe challenges his sentence on constitutional grounds, arguing that the Sentencing Reform Act of 1984, as applied to his case, violates Article III because the Sentencing Commission, established by Congress, effectively usurps the discretion of the district court to depart from the applicable sentencing range. Rahe failed to raise this issue in the district court. We will not review the issue absent plain error, error that "is `plain' and that `affect[s] substantial

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

rights.'" United States v. Olano, ___ U.S. ___, 113 S.Ct. 1770, 1778, 123 L.Ed.2d 508 (1993) (citation omitted).

The district court sentenced Rahe within the statutory maximum. Rahe did not move for a downward departure. Further, the constitutional issue raised by Rahe has been effectively answered. See Mistretta v. United States, 488 U.S. 361, 364, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989); United States v. White, 869 F.2d 822, 825 (5th Cir.), cert. denied, 490 U.S. 1112, and cert. denied, 493 U.S. 1001 (1989). Therefore, Rahe's substantial rights were not affected.

The appeal is DISMISSED. 5th Cir. R. 42.2.