

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2915
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DAVID E. MAYBERRY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-H-93-133

- - - - -
(September 22, 1994)

Before KING, SMITH, and BENAVIDES, Circuit Judges.

PER CURIAM:*

As his sole point of error on appeal, David E. Mayberry challenges, under the Eighth Amendment, his sentence of 235 months of imprisonment for being a felon in possession of a firearm. His argument has two perceptible components: (1) that his 235-month sentence was grossly disproportionate to his crime and, thus, violates the Eighth Amendment; and (2) that the application of § 924(e) to his offense, with its mandatory 15-year minimum sentence, resulted in cruel and unusual punishment.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In reviewing this type of Eighth Amendment challenge, we must make a threshold comparison of the gravity of the offense against the severity of the sentence. See McGruder v. Puckett, 954 F.2d 313, 316 (5th Cir.) cert. denied, 113 S.Ct. 146 (1992) (citing Harmelin v. Michigan, 501 U.S. 957, _____, 111 S. Ct. 2680, 2705-07, 115 L. Ed. 2d 836 (1991)(Kennedy, J., concurring)). The challenge is subject to narrow review and the guidelines are a "convincing objective indicator of proportionality." United States v. Sullivan, 895 F.2d 1030, 1032 (5th Cir.), cert. denied, 498 U.S. 877 (1990).

Mayberry was sentenced to the minimum sentence directed by the guidelines for his offense and status as an armed career criminal. The district court noted Mayberry's "long and continuous history of criminal conduct." His prior convictions include aggravated robbery with a deadly weapon and attempted murder. Mayberry's sentence was not disproportionately severe. See United States v. Prudhome, 13 F.3d 147, 150 (5th Cir.)(rejecting Eighth Amendment challenge to 288-month sentence for being a felon in possession of a firearm), cert. denied, 114 S. Ct. 1866 (1994). Mayberry's argument that the application of the armed career criminal provision to his offense conduct constitutes an Eighth Amendment violation is without merit. The judgment of the district court is AFFIRMED.