

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-3552
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CLAY BARREN GREMILLION,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
(CR-92-56-B-M1)

(January 31, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Appellant contests the district court's assessment of relevant conduct in sentencing Gremillion to 37 months imprisonment and three years supervised release after his guilty plea on possession with intent to distribute cocaine. Finding no error we affirm.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Gremillion contends that there was insufficient evidence to sustain the district court's factual finding that two weeks after he committed the offense of conviction, he was again illegally distributing rock cocaine. Gremillion was at that time arrested in the same general neighborhood and charged with possession of eighteen rocks of crack cocaine, which he threw to the ground as he ran from the arresting officers. Contrary to Gremillion's argument, there was no evidence in the record that Gremillion possessed these "rocks" for personal use. Nor is the district court bound by Gremillion's plea to simple possession in state court on this latter offense, where the geographical and temporal proximity to the first offense led to a reasonable inference that Gremillion was again attempting to distribute the drug. The district court did not err in finding that Gremillion's conduct on the second occasion was "relevant conduct" for sentencing purposes because it was part of the same course of conduct and common plan or scheme as his offense of conviction. U.S.S.G. § 1B1.3(a)(2).

We also reject Gremillion's argument, newly raised in this court, that a burden of proof higher than that of preponderance was required to enhance his sentencing level by the relevant conduct involved in the second offense. Because Gremillion did not object to the preponderance standard in the trial court, we may review his argument only for plain error. United States v. Lopez, 923 F.2d 47, 50 (5th Cir.), cert. denied,

111 S. Ct. 2032 (1991). There is no plain error as regards this alleged due process violation.

The sentence imposed by the trial court is AFFIRMED.