UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-5008
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GETZELL JOHNSON MURRELL, JR.,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas

(6:92-CR-75)

(February 11, 1994)

Before POLITZ, Chief Judge, GARWOOD and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

After sexually assaulting his estranged wife, Getzell Johnson Murrell burned down her home because she reported the incident to the police. A few days later he set her grandparents' house ablaze, killing a cousin who attempted to douse the flames.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Murrell pleaded guilty in Texas state court to sexual assault with a deadly weapon and capital murder, receiving life sentences. He also pleaded guilty to federal charges: two counts of arson in violation of 18 U.S.C. § 844(i), and one count of possession of a firearm during a crime of violence in contravention of 18 U.S.C. § 924(c)(1). The district court imposed what it believed to be the statutory maximum sentences: two ten-year terms and one five-year term, each to run consecutively for a total of 300 months imprisonment.[1] Murrell timely appealed.

The Presentence Report assigned Murrell an offense level of 40 and a criminal history score of 9, placing him in criminal history category IV. Murrell contests the calculation, maintaining that three points should be deducted from his criminal history score on the grounds that the sexual assault and capital murder cases were consolidated and hence were "related" within the meaning of U.S.S.G. § 4A1.2(a)(2).[2] The basis for that contention is that he was sentenced for both offenses at the same hearing by the same judge and received the same sentences, to run concurrently. Each case was filed under a separate docket number, however, and there was no order of consolidation. As we previously have held, under these circumstances the cases are not "related."[3] "The state court [was] not required to send the defendant out of the courtroom

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[1]Section 844(i) provides for life imprisonment or the death penalty when death results from the arson.

[2]See Application Note 3.

[3]**United States v. Garcia**, 962 F.2d 479 (5th Cir.), cert. denied, 113 S.Ct. 293 (1992).

before each sentence in order to ensure that the cases would not be deemed 'consolidated'."[4]

In any event, the additional three criminal history points did not alter Murrell's sentence. Had the cases been deemed "related," Murrell's criminal history score would only have been two points lower because he would have received an extra point under U.S.S.G. § 4A1.1(f) for a "prior sentence resulting from a conviction of a crime of violence that did not [otherwise] receive any points . . . because such sentence was considered related to another sentence resulting from a crime of violence. . . ."[5] That would have placed him in criminal history category IV, the same category under which he was sentenced. Moreover, even if Murrell had been assigned to category III, the indicated sentencing range at offense level 40 was the same as for category IV: 360 months to life imprisonment. There was no error. Had there been error it obviously would have been harmless.[6]

AFFIRMED.

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[4]**United States v. Ainsworth**, 932 F.2d 358, 361 (5th Cir.), cert. denied, 112 S.Ct. 327 and 112 S.Ct. 346 (1991).

[5]See U.S.S.G. § 4A1.2, Application Note 3.

[6]**Williams v. United States**, 112 S.Ct. 1112 (1992).