IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

---

No. 93-5021

Summary Calendar

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KELVIN TAYLOR,

Defendant-Appellant.

---

Appeal from the United States District Court
for the Eastern District of Texas
(1:92-CR-77-3)

---

(February 11, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[*]

I.

Kelvin Taylor pleaded guilty in the U.S. District Court for the Eastern District of Texas to possession of cocaine base with intent to distribute and aiding and abetting. In exchange for his plea, the government agreed to dismiss the remaining two counts

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

against him and to seek a sentencing cap of 120 months. The district court accepted the plea agreement.

Prior to sentencing, Taylor was sentenced to 118 months in prison by the U.S. District Court for the Southern District of Mississippi in a related case. In the PSR in the Texas case, the probation officer considered the amount of drugs for which Taylor was responsible in the Mississippi conviction as relevant conduct in determining his base offense level. Taylor's final offense level was 31, corresponding a sentencing range of 121 to 151 months.

Invoking U.S.S.G. § 5G1.2(d), the PSR recommended that Taylor's sentence run consecutively to his previously imposed federal sentence, but only to the extent necessary to produce a combined sentence in accordance with the total punishment of 121 to 151 months. Neither the government nor Taylor objected to the PSR.

The district court adopted the factual findings and sentencing conclusions contained in the PSR. The court sentenced Taylor to a term of 120 months imprisonment, 87 months to run concurrently with his previously imposed 118-month sentence and 33 months to run consecutively to that sentence.

II.

Taylor argues that the district court erred by ordering only 87 months of his sentence to run concurrently with his previous federal sentence, resulting in imprisonment in excess of 120 months in violation of the plea agreement. He contends that the government represented to him that the sentences would run

concurrently and that he entered into the plea agreement based upon that representation. As Taylor failed to raise this issue before the district court, we cannot review it unless the issue is purely legal and failure to consider it would result in manifest injustice. Self v. Blackburn, 751 F.2d 789, 793 (5th Cir. 1985).

No miscarriage of justice will occur if we decline to consider Taylor's argument. Insofar as the argument is purely legal, nothing in the record indicates that the government promised or that Taylor bargained for a concurrent sentence. In addition, the plea agreement is silent on the imposition of concurrent sentences. When he entered his guilty plea, Taylor confirmed that the plea agreement contained the terms of his agreement with the government as he understood them and that no other promises or assurances of any kind had been made to induce him to plead guilty.

The district court sentenced Taylor to a term of 120 months imprisonment, the term specified in the plea agreement, and the remaining two counts against him were dismissed. Taylor's claim that he was sentenced in violation of the plea agreement is without merit. See United States v. Bachynsky, 949 F.2d 722, 728 (5th Cir. 1991), cert. denied, 113 S.Ct. 150 (1992).

III.

The government challenges the district court's application of § 5G1.3 in this case. Taylor neither raised this issue before the district court nor argued it in his appellate brief. Moreover, he failed to file a reply after the government raised the issue in its papers. As Taylor failed to argue this issue, we consider it to

have been waived and will not entertain it on appeal. United States v. Valdiosera-Godinez, 932 F.2d 1093, 1099 (5th Cir. 1991), cert. denied, 113 S.Ct. 2369 (1993); see also Weaver v. Puckett, 896 F.2d 126, 128 (5th Cir.), cert. denied, 498 U.S. 966 (1990).

AFFIRMED.