

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 93-5625

(Summary Calendar)

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LOOKMAN TONY JACOBS,

Petitioner,

VERSUS

U.S. PAROLE COMMISSION,

Respondent.

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Appeal from a Determination of the  
United States Parole Commission  
(62696-080)

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(July 5, 1994)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Lookman Tony Jacobs was sentenced to seven years in a Mexican prison for possession of heroin, but was transferred to the United States to serve his sentence, under a prisoner transfer treaty between the United States and Mexico. Pursuant to 18 U.S.C. § 4106A(b)(1)(A) (1988), the United States Parole Commission ("the Commission") determined Jacobs' release date and period of supervised release. The Commission ruled that Jacobs would be

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\* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

continued to the expiration of his sentence, which would require him to spend 69 months in prison, followed by a 15 month period of supervised release. Jacobs appeals the Commission's determination, pursuant to 18 U.S.C. § 4106A(b)(2).

Jacobs presents several arguments challenging the Commission's application of the Federal Sentencing Guidelines in determining his release date and period of supervised release. Jacobs contends that the Commission applied the Guidelines incorrectly. He also argues that the Commission should not have applied the Guidelines at all because it thereby assumed the powers of an Article III judge and violated the principle of separation of powers. Jacobs further asserts that the Commission improperly denied him good behavior and work credits, and that the release date ordered by the Commission improperly subjects him to a sentence more severe than the one he received in Mexico.

Jacobs further contends that he was denied due process when the Commission failed to translate into English certain documents pertaining to his conviction and incarceration in Mexico.

Jacobs raises the foregoing claims for the first time on appeal to this Court. Jacobs was provided a copy of the Postsentence Investigation Report prepared by a U.S. Probation Officer, which detailed the application of the Sentencing Guidelines to his case. Thereafter Jacobs' counsel, an Assistant Federal Public Defender, sent a letter to the Commission stating that she had "no objections to make to the application of the guidelines as calculated by the probation officer." A hearing was

held, at which Jacobs stated that he had reviewed the Postsentence Investigation Report with counsel. Counsel reiterated at the hearing that she had no objections to the Guidelines calculations. Neither Jacobs nor his counsel requested that any documents be translated into English.

Because Jacobs raises his objections for the first time on appeal, we need not consider them. We are bound to "decide and dispose of [this] appeal in accordance with [18 U.S.C.] section 3742 . . . as though the determination appealed had been a sentence imposed by a United States district court," 18 U.S.C. § 4106A(b)(2)(B), and we will not consider a challenge to a sentence imposed by a district court, raised for the first time on appeal, unless the appellant demonstrates plain error. *See United States v. Surasky*, 974 F.2d 19, 21 (5th Cir. 1992), *cert. denied*, \_\_\_ U.S. \_\_\_, 113 S. Ct. 1948, 123 L. Ed. 2d 653 (1993). Plain error is "error so obvious that our failure to notice it would seriously affect the fairness, integrity, or public reputation of [the] judicial proceedings and result in a miscarriage of justice." *Id.* Jacobs does not address his failure to raise his objections below. He does not argue, and the record does not suggest, that the Commission's determination amounts to a miscarriage of justice. Consequently, we do not reach the merits of Jacobs' aforementioned claims.

Jacobs also contends, however, that the Commission should have granted him a downward departure from his Sentencing Guidelines range, because the Mexican authorities beat a confession out of

him, and because he was subjected to racial discrimination in the Mexican prison. Unlike his other claims, this one was preserved below when counsel requested a downward departure in a letter to the Commission, and at Jacobs' hearing. Nevertheless, Jacobs' claim is meritless.

"Departures from the guidelines are within the broad discretion of the district court." *United States v. Adams*, 996 F.2d 75, 78 (5th Cir. 1993). Furthermore, "[i]t is well established in this Circuit that we `will not review a district court's refusal to depart from the Guidelines, unless the refusal was in violation of the law.'" *Id.* Jacobs does not identify any legal rule that would entitle him to a downward departure from his Guideline range. He merely offers the conclusory statement that the Commission's failure to depart downward "is a miscarriage of justice," and we find no support in the record for that assertion.<sup>1</sup> Because Jacobs has not shown that the denial of the downward departure was in violation of the law, he is not entitled to review of that ruling by this Court. Furthermore, Jacobs plainly has not shown that the Commission's ruling was an abuse of discretion.

We therefore **AFFIRM**.

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<sup>1</sup> The range of punishment provided by the Guidelines was 108-135 months imprisonment, but the Commission ordered Jacobs to serve only 69 months in prison, plus 15 months supervised release (84 months total) because Jacobs was sentenced to 84 months imprisonment in Mexico. The hearing examiner explained that any departure that might be granted, as a result of the torture and discrimination suffered by Jacobs, would not reduce Jacobs' sentence any further than it was already being reduced.