

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-7531  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

COURTLAND DIXSON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Mississippi  
USDC No. 3:93-CR-16 (2)

- - - - -  
(May 18, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Courtland Dixson argues that the district court committed plain error by adopting the two-point U.S.S.G. § 2D1.1(b)(1) enhancement for possessing a weapon during a drug-trafficking crime. Dixson did not object to the application of § 2D1.1 in the presentence investigation report or at sentencing; therefore, he may not raise an objection now, absent plain error. See United States v. Pofahl, 990 F.2d 1456, 1471 (5th Cir.), cert. denied, 114 S.Ct. 266 (1993). The decision to correct plain error is discretionary with this Court. United States v. Olano, \_\_\_ U.S. \_\_\_, 113 S.Ct. 1770, 1776, 123 L.Ed.2d 508 (1993). That

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

discretion is not exercised unless the error "seriously affects the fairness, integrity or public reputation of judicial proceedings." Id. (internal quotations, alteration, and citation omitted).

The two-level enhancement under § 2D1.1(b)(1) is applied "if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense." § 2D1.1, comment. (n.3). To establish possession of the weapon, the Government must prove by a preponderance of the evidence "that a temporal and spatial relation existed between the weapon, the drug trafficking activity, and the defendant." United States v. Eastland, 989 F.2d 760, 770 (5th Cir.), cert. denied, 114 S.Ct. 246, 443 (1993) (internal quotations and citation omitted). "Generally, the government must provide evidence that the weapon was found in the same location where drugs or drug paraphernalia [were] stored or where part of the transaction occurred." Id.

Dixson was stopped in a vehicle traveling in tandem with another vehicle containing 1,550.3 grams of cocaine, \$35,549, some scales, and a digital pager. A loaded 9mm pistol was recovered from beneath the Dixson's seat. Although the gun was in a separate vehicle from the drugs, there was a sufficient temporal and spatial relationship for the sentencing judge to find that it was probable that the weapon was connected with the drug-trafficking activity. Dixson's argument does not rise to a level that "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings."

This appeal borders on being frivolous. We caution counsel. Counsel is subject to sanctions. Counsel has no duty to bring frivolous appeals; the opposite is true. See United States v. Burleson, \_\_\_ F.3d \_\_\_, (5th Cir. May 18, 1994, No. 93-2619).

AFFIRMED.