

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-7623
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL JEROME RICHEY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR-93-111-1
- - - - -
(March 23, 1994)

Before KING, DAVIS, and DeMOSS, Circuit Judges.

PER CURIAM:*

A district court may depart from the Sentencing Guidelines due to aggravating or mitigating circumstances not considered or inadequately considered by the Sentencing Guidelines. United States v. Jones, 905 F.2d 867, 869 (5th Cir. 1990). An upward departure is warranted if the criminal-history category "does not adequately reflect the seriousness of the defendant's past criminal conduct or the likelihood that the defendant will commit further crimes." U.S.S.G. § 4A1.3. The decision to depart

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

upward is reviewed for an abuse of discretion. United States v. McKenzie, 991 F.2d 203, 204 (5th Cir. 1993).

This Court will uphold an upward departure as long as the district court articulated acceptable reasons justifying the departure and the departure was reasonable. United States v. Pennington, 9 F.3d 1116, 1118 (5th Cir. 1993). The district court's reasons amount to findings of fact reviewable for clear error. Id. A finding of fact is clearly erroneous only "when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. Fitzhugh, 984 F.2d 143, 146 n.12 (5th Cir.) (internal quotation and citations omitted), cert. denied, 114 S. Ct. 259 (1993).

Michael Jerome Richey contends that the upward departure in his case was unreasonable because, as he alleges, criminal-history category VI adequately reflects the seriousness of his past criminal conduct and the risk of recidivism. Richey further contends that his age (40) and the lengthy prison terms he will have to serve make it unlikely that he will commit crimes after his release.

Richey has had three prior convictions for forgery, along with convictions for possession of forged documents, misdemeanor assault, felony theft, aggravated robbery, possession of methamphetamine, and possession of stolen mail. Richey's long history of crime demonstrates a clear disrespect for the law. See Pennington, 9 F.3d at 1118. In light of Richey's extensive criminal history, the district court's explanation, and the not

unreasonable departure of twelve months to the next highest guideline range, no abuse of discretion occurred in this case. See United States v. Chappell, 6 F.3d 1095, 1101 n.27, 1102 (5th Cir. 1993) (upward departure of 17 months to 54-month term reasonable where defendant had 25 criminal history points), cert. denied, 1994 WL 32045 (U.S. Mar. 7, 1994) (No. 93-7707), and petition for cert. filed, 1994 WL 53991 (U.S. Mar. 7, 1994) (No. 93-7761); United States v. Laury, 985 F.2d 1293, 1310-11 (5th Cir. 1993) (upward departure of 25 months to 175-month term reasonable where defendant had 20 criminal history points); United States v. Lambert, 984 F.2d 658, 664 (5th Cir. 1993) (en banc) (upward departure of 18 months reasonable and not disproportionate in light of defendant's "consistent serious, criminal history"). AFFIRMED.