

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8284
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES HOLLEY WILSON, JR., a/k/a
Ronald McFarlin, a/k/a
James Harold Washington, a/k/a
James Holly Wilson, a/k/a
Prentice Spears, a/k/a
Othel Watkins, a/k/a
James Halley Wilson,

Defendant-Appellant.

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Appeal from the United States District Court
for the Western District of Texas
USDC No. A-92-CR-77
- - - - -
(January 6, 1994)

Before GARWOOD, JOLLY, and BARKSDALE, Circuit Judges.

PER CURIAM:*

James Holley Wilson, Jr., entered a guilty plea to one count of taking \$16,174 by force, violence, and intimidation from a bank and one count of knowingly using and carrying a firearm in relation to the robbery of a bank. The district court sentenced Wilson to a term of 210 months of imprisonment for the robbery

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

and a consecutive term of 60 months of imprisonment on the gun count.

Wilson alleges that the district court failed to state in open court its reasons for imposing the 210-month sentence as is required when the sentencing range exceeds 24 months. See 18 U.S.C. § 3553(c)(1); United States v. Fair, 979 F.2d 1037, 1041 n.3 (5th Cir. 1992). Wilson did not raise this issue during the sentencing hearing, therefore, this Court will review for plain error. United States v. Pigno, 922 F.2d 1162, 1167 (5th Cir. 1991). The district court stated that "based on the consideration of the record and the presentence report and those levels [offense level 30, criminal history category VI] it is the judgment of this court that . . . you be sentenced . . . for a period of 210 months." Also, the judgment of conviction states that the seriousness of the offense was the reason for the choice of sentence. Taken together with the argument presented to the district court, these reasons are sufficient to preclude a finding of plain error.

Wilson asserts that the district court erred by not reducing his offense level an additional point under U.S.S.G. § 3E1.1(b) for acceptance of responsibility and by sentencing him as a career offender. Wilson did not specifically object to either of these findings. In United States v. Lopez, 923 F.2d 47, 50 (5th Cir.), cert. denied, 111 S.Ct. 2032 (1991), the Court held that "[q]uestions of fact capable of resolution by the district court upon proper objection at sentencing can never constitute plain error." Whether Wilson accepted responsibility for his crimes

and whether Wilson was a career offender as defined by the guidelines are questions of fact that could have been resolved upon proper objection and cannot be plain error. See id. at 50.

Wilson contends that he should not have been sentenced as a career offender because he had not been indicted as a career offender and because he did not have notice that he would be so sentenced. "Since the Sentencing Guidelines do not require that the defendant be given notice when the Government intends to seek Career Offender status, the Government need not give any such notice prior to sentencing pursuant to the sentencing guidelines." United States v. Marshall, 910 F.2d 1241, 1245 (5th Cir. 1990), cert. denied, 498 U.S. 1092 (1991).

Finally, Wilson argues that the district court erred in sentencing him to a consecutive term of 60 months of imprisonment on the gun count of the indictment. The mandatory 60-month sentence was imposed for a violation of 18 U.S.C. § 924(c) and the 210-month sentence imposed on the underlying offense, the bank robbery, was calculated without applying a specific offense characteristic for firearm discharge, use, or possession in accordance with the background commentary to U.S.S.G. § 2K2.4.

AFFIRMED.