

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30107
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILFRED GUY aka Roy Gray,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR 93-266 I

- - - - -
(January 26, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Wilfred Guy argues that his sentence for possession of a
firearm by a convicted felon is unlawful because his prior
conviction under California Penal Code § 245(a)(1) was not
punishable by imprisonment for a term exceeding one year. See
U.S.S.G. §§ 2K2.1(a)(4)(A), 4B1.2(1), 4B1.2, comment. (n.3).
Even though Guy was sentenced under a clause in § 245(a)(1) that
provides for no more than one year incarceration in the county

* 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that this opinion should not be published.

jail, a conviction for violating § 245(a)(1) is punishable by up to four years imprisonment.

The Ninth Circuit has held that a violation of § 245(a)(1) is punishable by imprisonment for a term exceeding one year. United States v. Horodner, 993 F.2d 191, 194 (9th Cir. 1993). Even without Horodner, we would reach the same conclusion because, except in the case of ambiguity, a statute's meaning is based on its plain language. United States v. Denson, 588 F.2d 1112, 1117 (5th Cir.), rev'd en banc on other grounds, 603 F.2d 1143 (5th Cir. 1979). "Punishable" means capable of being punished. Id. at 1116.

By the plain language of § 245(a)(1), a California assault with a deadly weapon was capable of being punished by four years imprisonment. The fact that Guy's actual sentence was more lenient than the maximum is irrelevant to the Guidelines calculation.

AFFIRMED.