

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30542
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHAWN SMITH,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CR-94-45-A4
- - - - -

(January 26, 1995)

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

PER CURIAM:*

Shawn Smith argues that the disparate sentencing provisions for cocaine base (crack) and cocaine powder are so irrational, arbitrary, and discriminatory as to violate the due process and equal protection provisions of the Constitution.

The disparate sentencing provisions for crack cocaine and cocaine powder contained in the sentencing guidelines do not violate constitutional due process guarantees. See United States

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

v. Watson, 953 F.2d 895, 897 (5th Cir.) cert. denied, 112 S. Ct. 1989 (1992).

We have also rejected the argument that the guidelines applicable to crack cocaine violate equal protection because they have a discriminatory effect on African-Americans. Id. at 897. "Even if a neutral law has a disproportionately adverse effect upon a racial minority, it is unconstitutional under the Equal Protection Clause only if that impact can be traced to a discriminatory purpose." United States v. Galloway, 951 F.2d 64, 65 (5th Cir. 1992) (citation omitted). "[T]he fact that crack cocaine is more addictive, more dangerous, and can therefore be sold in smaller quantities is reason enough for providing harsher penalties for its possession." Watson, 953 F.2d at 898.

A prior panel opinion may be overruled only by an "overriding Supreme Court decision," a change in statutory law, or this Court sitting en banc. See United States v. Zuniga-Salinas, 952 F.2d 876, 877 (5th Cir. 1992) (en banc). Smith's arguments are rejected by controlling case law.

Because Smith has failed to raise an issue of arguable merit, the appeal is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. Rule 42.2.

DISMISSED.