

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40207  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CHARLES RAY LANE,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:93-CR-54-1  
- - - - -  
(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:\*

Charles Ray Lane pleaded guilty to possessing, with intent to distribute, less than five grams of a mixture or substance containing cocaine base within 1000 feet of a public elementary school and was sentenced to 188 months imprisonment and six years of supervised release.

Lane challenges the district court's reliance on § 4B1.1 of the Sentencing Guidelines, which applies to career offenders, to calculate his sentence. Pursuant to the maximum statutory

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

punishment for the charged offense and the applicable list of offense levels from § 4B1.1, the probation officer calculated an offense level of 34, which he reduced to 31 based on a finding of acceptance of responsibility. Lane's criminal-history category automatically became VI under § 4B1.1. The district court adopted the findings in the presentence report (PSR).

Lane failed to object to the PSR before the district court. Under FED. R. CRIM. P. 52(b), this Court may correct forfeited errors only when the appellant shows the following factors: (1) there is an error, (2) that is clear or obvious, and (3) that affects his substantial rights. United States v. Rodriguez, 15 F.3d 408, 415-16 (5th Cir. 1994) (citing United States v. Olano, \_\_\_ U.S. \_\_\_, 113 S. Ct. 1770, 1777-79, 123 L. Ed. 2d 508 (1993)). If these factors are established, the decision to correct the forfeited error is within the sound discretion of the Court, and the Court will not exercise that discretion unless the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. Olano, 113 S. Ct. at 1778.

A defendant is considered a "career offender" if (1) he "was at least eighteen years old at the time of the instant offense, (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense, and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense." § 4B1.1. In this case, Lane committed the charged offense at age forty; the instant offense of conviction is a felony involving controlled substances; Lane was convicted in 1975 of armed

robbery, a crime of violence; and in 1990, Lane was convicted for unlawful delivery of a controlled substance. Section 4B1.1, therefore, applies in this case. Lane, moreover, does not assert that he is not a career offender as defined by § 4B1.1. He merely complains generally of the use by the district court of that section of the Sentencing Guidelines.

Because Lane has not shown how the district court committed error, plain or otherwise, in determining his sentence, the judgment is AFFIRMED.