

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40359
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PAUL BROWN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 5:93-CR-50085-ALL

- - - - -
(November 16, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:*

Unadjudicated extraneous offenses may be considered by the court as relevant conduct in determining a defendant's offense level. Relevant conduct includes quantities of drugs not specified in the count of conviction if they were part of a common scheme or plan or part of the same course of conduct as the count of conviction. U.S.S.G. § 1B1.3(a)(2); United States v. Bryant, 991 F.2d 171, 176-77 (5th Cir. 1993). In determining whether conduct is "relevant," this Court considers the similarity, regularity, and temporal proximity of the conduct.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

United States v. Bethley, 973 F.2d 396, 401 (5th Cir. 1992), cert. denied, 113 S. Ct. 1323 (1993). A district court's findings regarding relevant conduct are reviewed for clear error. United States v. Lokey, 945 F.2d 825, 839-40 (5th Cir. 1991).

Paul Brown was indicted for seven sales to undercover agents of varying amounts of methamphetamine, cocaine hydrochloride, and cocaine base. Each of the sales was one of a series of sales Brown conducted with agents between May 7, 1992 until September 9, 1992. From this evidence, the district court could have concluded that the adjudicated offenses were part of Brown's common scheme or plan to engage in drug sales and that the sales demonstrated the regularity, similarity, and fast pace of Brown's drug trade. Consequently, the district court did not clearly err in using the relevant conduct from the adjudicated offenses to determine his offense level.

Brown argues that the trial court erred in failing to depart downward regarding his sentence in light of the sentencing disparity between powder cocaine and crack cocaine. This Court will not review a district court's refusal to depart from the guidelines unless the refusal is a violation of the law. United States v. Guajardo, 950 F.2d 203, 208 (5th Cir. 1991), cert. denied, 112 S. Ct. 1773 (1992). The district court's factual findings are reviewed for clear error, and its legal conclusions are reviewed de novo. United States v. Soliman, 954 F.2d 1012, 1013-1014 (5th Cir. 1992). The crack-powder cocaine sentencing guidelines punishment scheme does not offend constitutional due process or equal protection guarantees. United States v. Watson,

953 F.2d 895, 897-98 (5th Cir.), cert. denied, 112 S. Ct. 1989 (1992). The district court's discretionary refusal to depart downward was not a violation of law and will not be disturbed.

AFFIRMED.