

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40477  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PAMELA PATTERSON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
(1:93-CR-6-1)

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(February 15, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Appellant Pamela Patterson pled guilty to possession with intent to distribute cocaine base and carrying a firearm during a drug-trafficking crime. She contests her sentence, arguing that she was the victim of discriminatory, selective prosecution, because white defendants arrested with similar quantities of cocaine powder in the Eastern District of Texas are not prosecuted

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

in federal court as often as black defendants. The district court rejected this claim, and so do we.

There is first a strong likelihood that Patterson waived her selective prosecution claim by not raising it in connection with the plea. See United States v. Owens, 996 F.2d 59, 60 (argument that federal prosecutor prosecuted defendant in federal court because of his race was a non-jurisdictional defect waived by guilty plea). See also, United States v. Cortez, 973 F.2d 764, 766-67 (9th Cir. 1992) (selective prosecution claim may be a non-jurisdictional claim waived by guilty plea).

Even if the claim was not waived, however, Patterson's statistical showing has not demonstrated either "that others similarly situated have not been prosecuted; . . . [or] that the allegedly discriminatory prosecution of the defendant was based on an impermissible motive." Cortez, 973 F.2d at 767, citing Wayte v. United States, 470 U.S. 598, 608, 105 S.Ct. 1524, 1531 (1985). Her statistics demonstrate only that a disproportionately high number of blacks have utilized the services of the federal public defender in the Eastern District. Moreover, Patterson never requested an evidentiary hearing in the district court to assert her claim of selective prosecution. She merely rested on her objection, which the court characterized as a "legal issue."

The sentence imposed by the trial court is AFFIRMED.