

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41231
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KEVIN DEWAYNE McDONALD,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:94-CR-44
- - - - -

June 30, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Kevin Dewayne McDonald pleaded guilty to one count of possession of cocaine base with intent to distribute. He was sentenced to 41 months imprisonment, three years supervised release, and a \$50 special assessment.

McDonald argues that he is entitled to a three-level reduction for acceptance of responsibility under § 3E1.1(b). The defendant bears the burden of demonstrating that he is entitled to the adjustment under § 3E1.1, and this court reviews the sentencing court's determination with even more deference than

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

the pure clearly erroneous standard. United States v. Bermea, 30 F.3d 1539, 1577 (5th Cir. 1994), cert. denied, 115 S. Ct. 1113, 1825 (1995); § 3E1.1, comment. (n.5) (the determination of the sentencing judge is entitled to great deference).

The district court may deny a reduction for acceptance of responsibility for failure to refrain from criminal conduct while on pretrial release. United States v. Hooten, 942 F.2d 878, 883 (5th Cir. 1991); United States v. Watkins, 911 F.2d 983, 985 (5th Cir. 1990). McDonald had two positive drug tests while on pretrial release, and the district court properly relied on these positive drug tests to deny him a three-level reduction for acceptance of responsibility. Watkins, 911 F.2d at 985.

AFFIRMED.