

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50354
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL HOWARD SULLIVAN,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. 94-50354
- - - - -

March 21, 1995

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

In this appeal from the denial of a motion brought pursuant to 18 U.S.C. 3582(c)(2), Michael Howard Sullivan argues that the district court should have further reduced his sentence following a 1993 amendment to U.S.S.G. § 2D1.1. Under Amendment 488 (Nov. 1993), the weight of the carrier medium is not to be used to calculate the amount of LSD on which the guideline sentence is to be determined. However, for purposes of determining the

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

statutory mandatory minimum sentence the weight of the carrier medium for LSD is to be included. United States v. Pardue, 36 F.2d 429, 431 (5th Cir. 1994)(citing United States v. Chapman, 500 U.S. 453, 460-62 (1991)). As a result, Sullivan's mandatory minimum sentence of 10 years remained unchanged. The district court retained its discretion to grant a further downward departure in light of the Government's motion for downward departure, see United States v. Hernandez, 17 F.3d 78, 83 (5th Cir. 1994), but its refusal to exercise that discretion in this case was not an abuse of that discretion.

AFFIRMED.