

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50511
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RAFAEL ROBERTSON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. W-93-CR-109
- - - - -

(January 27, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Rafael Robertson appeals his sentence in a conviction for possession of a firearm by a felon. He argues that the district court misapplied the guidelines because the statutory maximum penalty for 18 U.S.C. § 924(e)(1) should be 25 years instead of life imprisonment, the Government failed to prove that the three previous felonies used to enhance his sentence as an armed career

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

criminal met the penalty requirements of § 924(e)(2), and the district court erred in finding that he was guilty of the charged offense because the Government offered no evidence that he had been convicted of a crime punishable by imprisonment for a term in excess of one year.

Robertson failed to raise objections in the district court on the specific grounds that he raises on appeal. In the absence of a contemporaneous objection, we may correct errors only when (1) there is an error; (2) the error is clear and obvious under current law; and (3) the error affects the defendant's substantial rights. United States v. Calverley, 37 F.3d 160, 162-64 (5th Cir. 1994) (en banc) (citing United States v. Olano, ___ U.S. ___, 113 S. Ct. 1170, 1777-79, 123 L. Ed. 2d. 508 (1993)). If these requirements are met, relief is within the sound discretion of the Court, exercisable only when the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. Calverley, 37 F.3d at 164.

Robertson has not demonstrated that his sentence in excess of 25 years constituted error. Life imprisonment is the maximum penalty under § 924(e), even though the statute does not so specify. United States v. Miles, 947 F.2d 1234, 1235 and n.1 (5th Cir. 1991). As to his remaining arguments, Robertson has not demonstrated that there was error. The maximum penalty for violating 21 U.S.C. § 841(a)(1), the prior federal conviction, is ten years or more. 21 U.S.C. § 841(b). The California

convictions for robbery were punishable by terms of one year or more. Cal. Penal Code §§ 211, 213 (West 1994).

AFFIRMED.