

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-50610
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ANDRE THOMPSON, a/k/a
Andrea Thompson,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-94-CA-091 (MO-91-CR-063-(3))
- - - - -

June 27, 1995

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

PER CURIAM:*

Andre Thompson requests that his sentence be vacated because the United States Constitution and biblical scriptures prohibit incarceration for nonviolent crimes. Incarceration has been utilized as an appropriate form of punishment for narcotics offenses since the beginning of this century. See Thurston v. United States, 241 F. 335 (5th Cir.), cert. denied, 245 U.S. 646 (1917). Thompson's penalty, incarceration, was determined by

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

reference to the Sentencing Guidelines promulgated as a result of the Sentencing Reform Act of 1984 whose constitutionality has been confirmed by the United States Supreme Court. See Mistretta v. United States, 488 U.S. 361, 412 (1989).

Thompson also argues for the first time on appeal, that incarceration interferes with his right to "free exercise of religion." "[I]ssues raised for the first time on appeal are not reviewable by this court unless they involve purely legal questions and the failure to consider them would result in manifest injustice." Varnardo v. Lynaugh, 920 F.2d 320, 321 (5th Cir. 1991). Because this issue was not raised in the district court, this court need not address it. Accordingly, Thompson's appeal is DISMISSED as frivolous. See Fed. R. App. P. 42.2.