

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60160

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN WILLIAM RAY, SR.,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Texas
(CR-M-93-020-1)

(February 7, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges:

PER CURIAM:*

The defendant, John William Ray, Sr., pled guilty to one count of conspiracy to possess with intent to distribute methamphetamine. The defendant's sentence was enhanced pursuant to U.S.S.G. § 4B1.1 (the career-offender provision). The applicability of section 4B1.1 under the circumstances was not clear at the time the defendant was sentenced by the district court. After this appeal was filed, this circuit decided that a conspiracy conviction was

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

not a "controlled substance offense" under section 4B1.1, and thus could not trigger the career-offender enhancement. *United States v. Bellazerius*, 24 F.3d 698, 702 (5th Cir.), *cert. denied*, 115 S.Ct. 375 (1994). We must VACATE defendant's sentence and REMAND for resentencing, in light of this intervening opinion.