

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60377
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

versus

JERRY JOHNSON,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 1: 93-CR-118-S

- - - - -
(January 27, 1995)

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

PER CURIAM:*

Jerry Johnson contends that the district court erred in granting him only a two level reduction in the offense level based on a finding that he was a minor, and not a minimal participant in the offense under Section 3B1.2 of the Guidelines. Johnson's role was not limited to a single unloading or smuggling transaction like the examples given in the comments to Section 3B1.2. Rather, Johnson played an integral role in transporting the marijuana for the conspiracy on two occasions. The district

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

court's ruling that Johnson was a minor participant was not clearly erroneous.

Johnson also lists as issues that the U.S. Sentencing Guidelines are unconstitutional because the Guidelines do not give district courts discretion in sentencing defendants, and that the sentence imposed is cruel and unusual punishment. Johnson has forfeited these issues because he does not discuss them in his brief or cite any case law in support of his arguments. United States v. Valdiosera-Godinez, 932 F.2d 1093, 1099 (5th Cir. 1991), cert. denied, 113 S. Ct. 2369 (1993).

Finally, Johnson argues that it was "unfair" for the district court to impose the same sentence upon both him and his co-defendant, Odell Melton, because Melton was allegedly much more culpable than Johnson. Because Johnson failed to raise this argument in the district court, review is limited to plain error. Fed. R. Evid. 103(d). See United States v. Calverley, 37 F.3d 160, 162 (5th Cir. 1994) (en banc).

A defendant cannot challenge his sentence based on the lesser sentence given by the district court to a co-defendant. See United States v. Pierce, 893 F.2d 669, 678 (5th Cir. 1990); United States v. Boyd, 885 F.2d 246, 249 (5th Cir. 1989). Johnson has not established that it was plain error for the district court to impose upon him the same sentence that his co-defendant received.

The district court's judgment is AFFIRMED.