

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-20332
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES RAY LEWIS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Southern District of Texas
USDC No. CR H 95-191
- - - - -

December 10, 1996

Before WIENER, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

James Ray Lewis appeals the district court's denial of his motion to dismiss his indictment on double jeopardy grounds. Lewis contends that the district court erred in denying his motion to dismiss his indictment because he was prosecuted previously by the State of Texas for the same offense, possession of cocaine with intent to distribute. A double jeopardy violation does not occur when a defendant is prosecuted first in

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

state court and later in federal court on similar charges. See Heath v. Alabama, 474 U.S. 82, 89 (1985); United States v. Moore, 958 F.2d 646, 650 (5th Cir. 1992). Lewis does not argue that the federal and state governments colluded to prosecute him twice for the same offense. The district court did not err in dismissing Lewis' motion to dismiss his indictment on double jeopardy grounds.

AFFIRMED.