

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30367
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GARY AUGUST DUPAQUIER,

Defendant-Appellant.

Appeal from the United States District Court for the
Middle District of Louisiana

May 2, 1997

Before HIGGINBOTHAM, WIENER, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Gary August Dupaquier appeals the sentence imposed after reversal on one count and remand for resentencing. The district court did not commit plain error in departing upward from the guideline range at resentencing. United States v. Vontsteen, 950 F.2d 1086, 1092-93 (5th Cir.) (en banc), cert. denied, 505 U.S. 1223, 112 S.Ct. 3039 (1992). See also United States v. Campbell,

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

106 F.3d 64, 68-69 (5th Cir. 1997) (adopting the "aggregate approach" to determine whether the Pearce¹ presumption of vindictiveness attaches and holding that under such approach when sentence on remand is less severe than the original sentence, the presumption of vindictiveness does not arise). Nor did it plainly err in increasing Dupaquier's offense level for resentencing based on his prior criminal history. See United States v. Hawkins, 87 F.3d 722, 730 (5th Cir.), cert. denied, 117 S.Ct. 408 (1996); United States v. Singleton, 49 F.3d 129, 132-34 (5th Cir.), cert. denied, 116 S.Ct. 324 (1995).

Dupaquier's motion to temporarily stay proceedings in this court, have his attorney withdrawn, and proceed pro se so that he may file a supplemental brief in DENIED. See Smith v. Collins, 977 F.2d 951, 962 (5th Cir. 1992), cert. denied, 501 U.S. 829, 114 S.Ct. 97 (1993).

AFFIRMED.

¹ North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072 (1969).