

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-30505
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ARNOLD MALCOLM PILLETTE,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 95-CR-20067-02
- - - - -

December 10, 1996

Before WIENER, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Arnold Malcolm Pillette appeals his sentence for conspiracy to possess cocaine base with intent to distribute and interstate travel in aid of illegal activity. His argument that U.S.S.G. § 2D1.1(c), which provides that the penalty for cocaine base is 100 times higher than the penalty for cocaine powder, violates the Equal Protection Clause is foreclosed. This court has determined that the penalty scheme in § 2D1.1 is rationally

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

related to the legitimate government interest in protecting the general welfare. See United States v. Wilson, 77 F.3d 105, 112 (5th Cir. 1996). Pillette's new claim on appeal that the Government did not prove by a preponderance of the evidence that the cocaine base charged in the indictment was crack cocaine within the meaning of § 2D1.1 is frivolous.

AFFIRMED.