

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-31222
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT EARL LEE,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 95-CR-30029
- - - - -

March 5, 1998

Before JONES, SMITH and STEWART, Circuit Judges.

PER CURIAM:*

Robert Earl Lee appeals his jury conviction for four counts of making a false statement on a United States Treasury Bureau of Alcohol, Tobacco, and Firearms (ATF) Form 4473 and four counts of being a felon in possession of a firearm. Lee argues that the evidence was insufficient to support his convictions. We have reviewed the record and find that as to counts one and two, a reasonable trier of fact could find the evidence established the essential elements of the offense beyond a reasonable doubt. See

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

United States v. Alix, 86 F.3d 429, 435 (5th Cir. 1996). As to counts three through eight, we find that the record is not "so devoid of evidence pointing to guilt" or "so tenuous that his conviction is viewed as shocking." See United States v. Vaquero, 997 F.2d 78, 82 (5th Cir. 1993).

Lee also contends that the district court erroneously believed that it lacked the authority to depart downward under U.S. Sentencing Guidelines § 5K2.0 based on Lee's poor health. Because the district court properly considered its authority and discretion under the Guidelines and determined that a downward departure was not warranted under the circumstances, we lack jurisdiction to review the denial of a downward departure. See United States v. DiMarco, 46 F.3d 476, 477 (5th Cir. 1995).

AFFIRMED.