

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 96-40957  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES ALTON WEST,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:95-CR-161-2  
- - - - -

August 1, 1997

Before JOLLY, BENAVIDES, and PARKER, Circuit Judges.

PER CURIAM:\*

James Alton West appeals his conviction for conspiracy to possess with intent to distribute marijuana and possession with intent to distribute marijuana. West contends that the evidence was insufficient to support his conviction and that the district court erred in denying his motion and amended motion to dismiss the indictment on grounds of prosecutorial vindictiveness.

The evidence was sufficient to support West's conviction. See United States v. Maltos, 985 F.2d 743, 746 (5th Cir. 1992);

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\* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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. Diaz-Carreon, 915 F.2d 951, 953-54 (5th Cir. 1990). The district court did not err in denying West's motion and amended motion to dismiss the indictment because West did not demonstrate that circumstances warranted a presumption of vindictiveness or actual vindictiveness. See United States v. Johnson, 91 F.3d 695, 697-99 (5th Cir. 1996); United States v. Aggarwal, 17 F.3d 737, 744 (5th Cir. 1994).

AFFIRMED.