

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-60019
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LEONARD STANLEY DRAPER,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Mississippi
USDC No. 2:94-CR-120

August 20, 1996

Before KING, DUHÉ, and DeMOSS, Circuit Judges.

PER CURIAM:*

Leonard Stanley Draper appeals from his guilty-plea convictions and sentence for conspiracy to distribute and to possess with intent to distribute cocaine base and possession with intent to distribute cocaine base in violation of 18 U.S.C. §§ 841 and 846. He argues for the first time on appeal that the Government engages in selective prosecution of §§ 841 and 846, thus violating his rights to due process and equal protection under the law, and that the sentencing

* Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

provisions of § 841 with regard to crack cocaine constitute cruel and unusual punishment in violation of the Eighth Amendment. We have reviewed the record and find no plain error. Draper has failed to carry his burden of establishing selective prosecution. See United States v. Cooks, 52 F.3d 101, 105 (5th Cir. 1995). Further, this court has previously rejected due process, equal protection, and Eighth Amendment challenges to the statutory penalties for those defendants convicted of trafficking in cocaine base. United States v. Fisher, 22 F.3d 574, 579 (5th Cir.), cert. denied, 115 S. Ct. 529 (1994). Accordingly, the appeal is DISMISSED as frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2. Counsel is warned that pursuing frivolous appeals invites sanctions. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir.), cert. denied, 115 S. Ct. 283 (1994).

DISMISSED; SANCTION WARNING ISSUED.