

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 97-31210  
(Summary Calendar)

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

KELVIN M. JONES, also known as Kevin Maurice Jones,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Middle District of Louisiana  
USDC No. 97-CR-43-ALL-B-M1

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December 14, 1998

Before JOLLY, SMITH, and WIENER, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Kelvin M. Jones, a/k/a Kevin Maurice Jones, appeals his sentence, which was imposed following his guilty-plea conviction on three counts of distribution of cocaine base. Jones argues that the district court erred in failing to resentence him after it struck information in the presentence report that attributed an additional amount of cocaine base to him as relevant conduct. As the amended amount of cocaine base attributed to Jones did not affect the applicable guideline range, however, any possible error was harmless.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Jones also contends that the district court erred in increasing his criminal history score pursuant to U.S.S.G. §§ 4A1.1(d) and (e). Jones states that he understood his plea agreement to have prohibited any increase in sentence. But, the plea agreement contains no such prohibition; rather, it clearly indicates that Jones's sentence would be determined according to applicable sentencing guidelines. His argument has no merit.

Finally, Jones asserts that one of his previous state convictions used to calculate his criminal history category was subsequently overturned, insisting that we must remand this case for resentencing. Although Jones has submitted a document purporting to support his argument, we cannot consider evidence that was not first submitted to the district court. See Fed. R. App. P. 10(a). Without any cognizable supporting evidence, we must deny Jones's argument.

AFFIRMED.