

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-50221
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LIONEL LEWIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(SA-96-CR-268-1)

July 9, 1997

Before SMITH, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Lionel Lewis appeals the consecutive six-month imprisonment sentences imposed after his guilty plea to misdemeanor offenses of re-entering a military base after being ordered not to do so and assault (biting a military policeman post-arrest; Lewis was HIV positive at the time).

There is a dispute over the standard of review to be applied. Because Lewis did not object to the sentence at the time it was

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

imposed by a magistrate judge, the Government contends that we should review only for plain error. See **United States v. Torrez**, 40 F.3d 84, 86 (5th Cir. 1994). However, the district court conducted a *de novo* review of Lewis' challenge to his sentence.

In any event, we affirm under either standard. Because no sentencing guidelines were applicable to the offenses to which Lewis pled guilty, his consecutive sentence was imposed, pursuant to 18 U.S.C. § 3584, after consideration of the statutory factors in 18 U.S.C. § 3553. In a similar context, we have held that implicit consideration of those factors is sufficient, so the magistrate judge did not commit error by failing to explicitly articulate any of them. See **United States v. Teran**, 98 F.3d 831, 836 (5th Cir. 1996). Moreover, based on, *inter alia*, the nature and circumstances of the offense and the offender, and the need for the sentence to reflect the seriousness of the offense, the imposition of consecutive sentences was warranted.

AFFIRMED