

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 98-50449
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERT DALE HOLLEY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. P-98-CR-17-1-B
- - - - -
December 10, 1998

Before DAVIS, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Robert Dale Holley pleaded guilty to possession with intent to distribute marijuana. In sentencing Holley, the district court did not grant him a reduction in his offense level for acceptance of responsibility because Holley had not reported to the probation officer, and had submitted urine specimens which tested positive for marijuana.

Holley argues that he should not have been denied the downward adjustment because his drug use while on pretrial release was due to drug addiction. In United States v. Watkins,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

911 F.2d 983, 985 (5th Cir. 1990), we held that the district court's denial of a reduction for acceptance of responsibility was not error when the defendant used cocaine while on release pending sentencing. In United States v. Flucas, 99 F.3d 177, 180 (5th Cir. 1996), we noted that the court had not considered whether a district court may deny a defendant the acceptance-of-responsibility reduction, if the sole reason for the defendant's continued drug use was addiction. However, because Flucas not only tested positive for drug use, but also failed to keep appointments with Pretrial Services and attend drug counseling, we held that it was not clear error for the district court to deny the downward adjustment for acceptance of responsibility. Id.

In this case, the record shows that Holley twice failed to provide urine specimens, moved without notifying his Probation Officer, and possessed firearms in contravention of the conditions of his release. This amounts to a failure to report, possession of firearms, and a failure to participate in drug testing in addition to the drug use. The district court's denial of the reduction for acceptance of responsibility was not clearly erroneous.

AFFIRMED.