

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-20910
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

VINCENT JOSEPH SHELVIN,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. H-98-CR-120-1

June 29, 2000

Before HIGGINBOTHAM, DeMOSS, and STEWART, Circuit Judges.

PER CURIAM:*

Vincent Joseph Shelvin appeals his sentence for possession with intent to distribute crack cocaine. He argues that the district court had discretion to consider his collateral challenge under to a state conviction used to calculate his criminal history under U.S.S.G. § 4A1.2 and United States v. Canales, 960 F.2d 1111, 1115 (5th Cir. 1992). Canales has been superseded by the 1993 amendments to the commentary of § 4A1.2 and by the Supreme Court's ruling in Custis v. United States, 511 U.S. 485, 487 (1994). See United States v. Toliver, No. 94-40978

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

(5th Cir. Mar. 17, 1995).** Under the new language of the commentary, Shelvin may collaterally attack his prior conviction only if that right is otherwise recognized in law. § 4A1.2, comment. (n.6). Shelvin has failed to provide any authority for a collateral attack on his sentence.

Moreover, even if the district court did have discretion under Canales to consider the collateral attack, the court chose not to exercise its discretion in Shelvin's case. The court refused to rule on the validity of a state conviction under state law until after the state courts had had an opportunity to address the issue. Shelvin cannot show an abuse of discretion in that decision. Shelvin's sentence is AFFIRMED.

** Unpublished opinions issued before January 1, 1996, have precedential value. 5TH CIR. R. 47.5.3.