

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 99-30507
(Summary Calendar)

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

RICHARD L. ATKINS,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Louisiana
(98-CR-20090-02)

July 12, 2000

Before POLITZ, WIENER, and DENNIS, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Richard L. Atkins appeals the sentence he received after pleading guilty to using a communication facility in the commission of a drug offense in violation of 21 U.S.C. § 843(b). Atkins's argues that the district court erred because, despite a "use immunity" provision in the plea agreement, it sentenced him using drug amounts provided by other witnesses. The district court's determination that neither the plea agreement nor U.S.S.G. § 1B1.8 was violated was not clearly erroneous given that the record does not establish that Atkins was instrumental to the

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Government in obtaining the other statements. United States v. Gibson, 48 F.3d 876, 878 (5th Cir. 1995).

Nor did the district court err when it determined that Atkins was a career offender for purposes of § 4B1.1. The November 1995 guidelines used to calculate Atkins's sentence were not ambiguous in indicating that Atkins's § 843(b) offense was a controlled-substance offense for § 4B1.1 purposes. See United States v. Mueller, 112 F.3d 277, 280-83 (7th Cir. 1997); United States v. Walton, 56 F.3d 551, 555-56 (4th Cir. 1995); United States v. Vea-Gonzales, 999 F.2d 1326, 1329 (9th Cir. 1992).

Likewise, the district court did not err when it rejected Atkins's argument that his two prior convictions were related for purposes of § 4A1.2. Although the offenses were similar, they lacked indicia of a common plan or scheme. United States v. Ford, 996 F.2d 83, 86 (5th Cir. 1993).

AFFIRMED.