

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-40840
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SEVERN RODGERS, JR.,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 9:00-CR-13-1
- - - - -

December 19, 2001

Before JOLLY, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Severn Rodgers, Jr., appeals the district court's imposition of a two-level increase pursuant to U.S.S.G. § 2K2.1(b)(3) for possession of a sawed-off shotgun. He argues that self-incriminating statements made to the probation officer, which served as the basis of the sentence increase, were protected under U.S.S.G. § 1B1.8(a) and should not have been used in determining the applicable guideline range. Rodgers further contends that the error was not harmless because the evidence,

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

absent Rodgers' self-incriminating statement, was not sufficient to support a finding that he possessed a sawed-off shotgun.

Rodgers did not object to, nor does he challenge on appeal, the presentence report's (PSR) finding that a sawed-off shotgun was discovered on the front seat of a stolen vehicle that he was driving. Consequently, there were indicia of reliability in the PSR that prior to the cooperation agreement the probation officer knew that Rodgers possessed a sawed-off shotgun. *See United States v. Gibson*, 48 F.3d 876, 879 (5th Cir. 1995)(holding that § 1B1.8 was not violated because probation officer relied on information independent of that presented by defendant); *United States v. Marsh*, 963 F.2d 72, 74-75 (5th Cir. 1992); *United States v. Shacklett*, 921 F.2d 580, 584-85 (5th Cir. 1991). Thus, the provisions of § 1B1.8(a) do not apply to restrict the district court's use of the previously known information regarding the sawed-off shotgun when calculating the offense level. *See* § 1B1.8(b)(1). Accordingly, Rodgers' sentence is AFFIRMED.