

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-51052
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LAFREDRICK DONTAI SMITH, also known as
LaFredrick Donta Smith,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. W-01-CR-38-ALL

June 18, 2002

Before HIGGINBOTHAM, DAVIS and, EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

LaFredrick Smith appeals his sentence following his guilty plea to possession with the intent to distribute crack cocaine. He argues that the district court erred in denying him credit for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1.

Challenges to the denial of a U.S.S.G. § 3E1.1 reduction are reviewed even more deferentially than a pure "clearly erroneous" standard, United States v. Gonzales, 19 F.3d 982, 983 (5th Cir.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

1994), and the defendant has the burden of proof, United States v. Tremelling, 43 F.3d 148, 152 (5th Cir. 1995). We find that the district court was aware that it had the discretion to award Smith credit for acceptance of responsibility despite enhancing his sentence pursuant to U.S.S.G. § 3C1.1 for obstructing justice. We further hold that the district court did not err in refusing to award Smith a U.S.S.G. § 3E1.1 credit, because his case was not an "extraordinary" one under which adjustments pursuant to U.S.S.G. §§ 3C1.1 and 3E1.1 might apply. See U.S.S.G. § 3E1.1, comment. (n. 4).

AFFIRMED.