United States Court of Appeals
Fifth Circuit

F I L E D

May 6, 2004

Charles R. Fulbruge III
Clerk

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

No. 03-41396
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES L. EWING,

Defendant-Appellant.

**Appeal from the United States District Court
for the Eastern District of Texas
(1:01-CR-226-1)**

Before BARKSDALE, EMILIO M. GARZA, and DENNIS, Circuit Judges.

PER CURIAM:[*]

James L. Ewing appeals his sentence, following his guilty-plea conviction of possession of marijuana by a federal inmate, a violation of 18 U.S.C. § 1791(a)(2). Ewing contends the district court clearly erred by denying a two-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1.

Although Ewing timely pleaded guilty and admitted to the Probation Office his role in the offense, the Probation Office reported that Ewing subsequently was again involved in possessing

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

marijuana and other unauthorized items while he was an inmate. The district court upheld the Probation Office's withdrawal of an earlier recommendation that Ewing be granted an acceptance-of-responsibility reduction, because he had not "voluntarily terminat[ed] or withdraw[n] from criminal conduct". *See* U.S.S.G. § 3E1.1, comment (n.1(b)).

The district court's finding that Ewing failed to show that he had accepted responsibility was not "without foundation", *see* ***United States v. Brace***, 145 F.3d 247, 264 (5th Cir.) (en banc), *cert. denied* 525 U.S. 973 (1998), as it was supported by unrebutted information in Ewing's Presentence Investigation Report ("PSR"). *See* ***United States v. Cothran***, 302 F.3d 279, 286 (5th Cir. 2002) (under U.S.S.G. § 6A1.3, p.s., PSR information bears "'sufficient indicia of reliability'" in making factual determinations under the Sentencing Guidelines, "'especially when there is no evidence in rebuttal'" (citation omitted)).

AFFIRMED