

December 17, 2004

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40747  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PRESTON JOSEPH ROBINSON,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 1:03-CR-189-TH-WCR-1  
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Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:\*

Preston Joseph Robinson pleaded guilty pursuant to a written plea agreement to possession with intent to distribute five grams or more but less than 50 grams of cocaine base. He was sentenced to 110 months of imprisonment, four years of supervised release, and a \$100 special assessment.

Robinson argues for the first time on appeal that the district court erred by including, pursuant to the relevant conduct provision of U.S.S.G. § 1B1.3(a)(2), an additional 15.4

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

grams of cocaine base in the calculation of his base offense level because the finding of the additional drug amount was made by the district court and was not made by a jury or admitted by Robinson. He contends that, in light of the Supreme Court's decision in Blakely v. Washington, 124 S. Ct. 2531 (2004), the use of the court's finding of the additional drug amount in the determination of his sentence violates the Fifth and Sixth Amendments. As Robinson acknowledges, this issue is foreclosed. See United States v. Pineiro, 377 F.3d 464, 473 (5th Cir. 2004), petition for cert. filed (U.S. July 14, 2004) (No. 04-5263).

AFFIRMED.