

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1979
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ERIC S. DAVIS,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:93-CR-168-G
- - - - -
(July 22, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Eric S. Davis appeals his sentence following a guilty plea to money laundering, possession with intent to distribute cocaine, possession with intent to distribute cocaine base, and felon in possession of a firearm.

Davis argues that the district court abused its discretion by not departing downwardly from the Sentencing Guidelines after it stated reasons which would mitigate in favor of departing downwardly. The district court noted that most of Davis's prior

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

convictions "all occurred when he was relatively a young man of twenty-one or twenty-two." The district court declined to depart because it saw no "authority to do so." Based on Davis's prior convictions, he received an enhancement under the Career Offender provision of the guidelines, U.S.S.G. § 4B1.1. Section 4B1.1 mandates that "[a] career offender's criminal history category in every case shall be Category VI." § 4B1.1.

"When the district court has sentenced within the guidelines, appellate review is limited to determining whether the guidelines were correctly applied." United States v. Cain, 10 F.3d 261, 263 (5th Cir. 1993). Davis does not argue on appeal that the career offender provision was incorrectly applied. Davis's claim is that the district court gave him precisely the sentence required by law, but erred by refusing to depart from the guidelines. Davis fails to identify any law violated by the district court's refusal to depart. A claim that the district court refused to depart from the guidelines and imposed a lawful sentence provides no grounds for relief. United States v. Sparks, 2 F.3d 574, 589 (5th Cir. 1993)(citations omitted).

Although the Government states in its brief that "Davis contends the disparity between the ratio of 100:1 for possession [of] cocaine powder and cocaine base is a violation of due process and equal protection as applied to black defendants and that the district court should have sentenced Davis under the guidelines for cocaine powder," Davis does not so argue. Davis acknowledges in his brief that this Court has rejected equal

protection and due process arguments about the disparity in sentencing for cocaine powder and cocaine base.

The Sentencing Guidelines mandate a substantially greater penalty for distributing cocaine base than for distributing cocaine powder. See § 2D1.1(c). "Cocaine base is a different drug from cocaine [powder]... Congress need not treat dissimilar drugs similarly." United States v. Thomas, 932 F.2d 1085, 1090 (5th Cir. 1991).

This Court will uphold a sentence unless the sentence was imposed in violation of law, imposed as a result of an incorrect application of the sentencing guidelines, or outside the range of applicable sentencing guidelines and is unreasonable. 18 U.S.C.

§ 3742(d) and (e); United States v. Buenrostro, 868 F.2d 135, 136-37 (5th Cir. 1989). Davis's arguments do not touch on any of those bases for disturbing his sentence.

Davis's sentence is AFFIRMED.