

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-30241  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES DUKE LEAR,  
a/k/a James Robin Bond,  
a/k/a Michel Gilbert Guillory,  
a/k/a Charles Robert Delaney,  
a/k/a Robert James Abadie,  
a/k/a Larry John Schmill,  
a/k/a Richard T. Nicklaus,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Louisiana  
USDC No. CR 93-295 "F" (5)

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(November 15, 1994)

Before JONES, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:\*

James Duke Lear argues that the district court misapplied the federal sentencing guidelines by failing to use the step-by-step methodology announced in United States v. Lambert, 984 F.2d 658, 663 (5th Cir. 1993) (en banc), to justify its upward departure at sentencing. Because Lear did not object to the district court's failure to explain its method of calculating the

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\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

extent of the upward departure, this Court's review is for plain error. United States v. Rodriguez, 15 F.3d 408, 414 (5th Cir. 1994).

Lear had 29 criminal history points, more than twice the points necessary for a defendant to be sentenced in the highest criminal history category. Under these circumstances, the district court's nineteen-month upward departure was not plainly erroneous. See United States v. Chappell, 6 F.3d 1095, 1101-02 and n.27 (5th Cir. 1993) (17-month upward departure based on criminal history score of 25), cert. denied, 114 S. Ct. 1232 and 114 S. Ct. 1235 (1994); United States v. Laury, 985 F.2d 1293, 1299, 1310-11 (5th Cir. 1993) (25-month upward departure based on criminal history score of 20 and the defendant's "constant recidivism and displaying of violent behavior").

AFFIRMED.