

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40622
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MICHAEL J. LINDSEY,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:94-CR-8
- - - - -

(January 24, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Michael J. Lindsey argues that the district court failed to supply any reasons for sentencing him to a 24-month sentence out of the 21-to-27-month guideline sentencing range.

Because Lindsey did not raise this issue in the district court, this Court's review is for plain error. United States v. Calverley, 37 F.3d 160, 162 (5th Cir. 1994) (en banc). Under Fed. R. Crim. P. 52(b), this Court may correct forfeited errors only when the appellant shows the following factors: (1) there

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

is an error, (2) that is clear or obvious, and (3) that affects his substantial rights. United States v. Rodriguez, 15 F.3d 408, 415-16 (5th Cir. 1994) (citing United States v. Olano, ___ U.S. ___, 113 S. Ct. 1770, 1777-79, 123 L. Ed. 2d 508 (1993)). If these factors are established, the decision to correct the forfeited error is within the sound discretion of the Court, and the Court will not exercise that discretion unless the error seriously affects the fairness, integrity or public reputation of judicial proceedings. Olano, 113 S. Ct. at 1778.

When the sentencing range does not exceed 24 months, the district court is not required to state in open court its reasons for imposing a sentence at a particular point within the range. United States v. Richardson, 925 F.2d 112, 117 and n.13 (5th Cir.), cert. denied, 501 U.S. 1237 (1991). As the spread in the instant case's guidelines range was six months, and the district court was not required to state its reasons for imposing sentence within this spread, Lindsey does not present a clear or obvious error that affects his substantial rights for which this Court should grant relief.

This appeal borders on being frivolous. We caution counsel that he is subject to sanctions and has a duty not to bring frivolous appeals. See United States v. Burleson, 22 F.3d 93, 95 (5th Cir.), cert. denied, 115 S. Ct. 283 (1994).

AFFIRMED.