IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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No. 98-40952
Summary Calendar
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UNITED STATES OF AMERICA,

                              Plaintiff-Appellee,

versus

KEMON DEWAYNE JACKO,

                              Defendant-Appellant.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:98-CR-9-1
- - - - - - - - - -

June 2, 1999

Before DAVIS, DUHÉ, and PARKER, Circuit Judges.

PER CURIAM:[1]

     Kemon Dewayne Jacko appeals his sentence after pleading guilty to possession with intent to distribute cocaine base. Jacko argues that the district court erred by including the amount of cocaine base, 27.97 grams, seized on July 26, 1996. He contends that this amount was not relevant conduct; that the only information which could connect his possession with intent to distribute cocaine base on July 26, 1996, and October 31, 1997, was information he proffered as part of his cooperation agreement; and he argues that

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

the use of this information to determine his sentence violated his U.S.S.G. § 1B1.8 agreement with the Government. The district court did not clearly err in finding that Jacko's statements to the police were not barred by § 1B1.8 from being considered to determine his sentence. <u>United States v. Gibson</u>, 48 F.3d 876, 878 (5th Cir. 1995). Jacko's statement that he had sold drugs since December 1993 bridges the relevant conduct gap between July 26, 1996, and October 31, 1997.

Jacko argues that the district court erred by increasing his offense level for possession of a firearm under § 2D1.1(b)(1). However, Jacko concedes that if the July 26, 1996, conduct is upheld as being relevant conduct, the two-level increase for the firearm possessed on July 26 would be properly assessed. Based on his concession and our conclusion that the July 26, 1996, conduct was properly considered as relevant conduct, we need not consider this issue.

AFFIRMED.