UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5666
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CAROLYN YVONNE BUTLER,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
SA 91 CR 484

July 19, 1993

Before POLITZ, Chief Judge, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Appellant Carolyn Butler has been sentenced to 48 years imprisonment for committing three bank robberies while using a firearm. 18 U.S.C. § 2113(d); 18 U.S.C. § 924(c). The issues she raises on appeal are narrowly framed, easily resolved, and insufficient to compel reversal of her conviction. With great

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

regret for the harshness of this mandatory sentence imposed on this appellant, we affirm.

Butler first contests the sufficiency of the evidence to demonstrate that she used a firearm in connection with the robberies committed on June 4 and July 10, 1991.[1] Not only is the evidence reviewed in the light most favorable to the government, but the jury was entitled to convict on circumstantial evidence. United States v. Bryant, 770 F.2d 1283, 1288 (5th Cir. 1985), cert. denied, 475 U.S. 1030 (1986). Here, the circumstantial evidence was strong. Butler had purchased a .25 caliber Raven Arms pistol in San Antonio on June 2, 1991. Victims of the first two bank robberies testified that she brandished a small, silver gun that looked exactly like the Raven Arms pistol. The government produced that pistol in evidence at trial. Butler did not dispute that she used the loaded Raven Arms pistol to commit her third robbery on November 22, 1991. The evidence was more than sufficient.

Butler next argues that the district court's jury instruction on punishment was misleading because the court told the jury not to concern themselves with her possible punishment and that the court would assess punishment. In reality, however, Butler asserts that the mandatory provisions of the criminal law gave the district court no sentencing latitude. This point is meritless. The challenged jury charge is among the Fifth Circuit

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[1] Butler does not contest the sufficiency of the evidence to convict her of those two bank robberies, although her brief makes much of the fact that the San Antonio Police Department had identified another woman as the perpetrator of those crimes. Apparently, Butler would apply the mistaken identity as part of her ineffectiveness of counsel claim.

pattern jury instructions, and it is well-established that punishment and sentencing matters are not the jury's concern. United States v. Del Toro, 426 F.2d 181, 184 (5th Cir.), cert. denied, 400 U.S. 829 (1970).

Butler next contends that the court erred by enhancing her second and subsequent convictions under § 924(c), as a consequence of which she was sentenced to 20 years without probation on each "second or subsequent" bank robbery conviction. This argument has been rejected by the Supreme Court in Deal v. United States, 1993 WL 155649 (U.S. May 17, 1993), affirming the Fifth Circuit's decision in that case. Further, Butler's "double jeopardy" contentions incorrectly rely on Grady v. Corbin, 495 U.S. 508, 110 S. Ct. 2084 (1990). Grady is not concerned with multiple punishment for separate acts contained in one indictment. Instead, Butler asserts that the Constitution prohibits her from being convicted and sentenced both for a § 2113(d) offense and for a § 924(c) crime, when the government alleges and proves both violations through the same set of facts. This argument was rejected in United States v. Holloway, 905 F.2d 893, 894-95 (5th Cir. 1990).

Finally, Butler asserts that she received ineffective assistance of trial counsel. Because she did not raise this claim in the district court, and the record is not adequately developed for our review, we decline to address it. Butler will not be prejudiced in her right to raise it in a later § 2255 proceeding.

United States v. Higdon, 832 f.2d 312, 313-14 (5th Cir. 1987), cert. denied, 484 U.S. 1075 (1988).

The judgment of the district court is AFFIRMED.