

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

August 13, 2008

No. 07-31087
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

PEYTON EARL KNATT

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 6:06-CR-60007-2

Before JOLLY, BENAVIDES, and HAYNES, Circuit Judges.

PER CURIAM:*

Peyton Earl Knatt appeals the sentence imposed after his guilty plea to conspiracy to possess with intent to distribute crack cocaine and marijuana. As the Government concedes, the district court, lacking the benefit of the Supreme Court's recent decisions in *Gall v. United States*, __ U.S.__, 128 S. Ct. 586 (2007), and *Kimbrough v. United States*, __ U.S.__, 128 S. Ct. 558 (2007), erroneously believed itself constrained by this court's pre-*Gall* jurisprudence from imposing

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

a nonguidelines sentence. The district court expressly stated that it would have imposed a different sentence but for the perceived constraints. Because the district court essentially treated the Guidelines as mandatory in this case, the sentence was procedurally unreasonable. See Gall, 128 S. Ct. at 597. The sentence is therefore VACATED and the case is REMANDED for resentencing.