

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

United States Court of Appeals  
Fifth Circuit

**FILED**

January 11, 2010

Charles R. Fulbruge III  
Clerk

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No. 09-50024  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DEXTER DARNELL HEWITT, also known as Dexter Curnell Hewitt,

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 6:07-CR-149-ALL

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Before JONES, Chief Judge, and DAVIS and WIENER, Circuit Judges

PER CURIAM:\*

Dexter Darnell Hewitt appeals from his jury verdict conviction for possession with intent to distribute at least 5 grams of crack cocaine within 1,000 feet of a playground pursuant to 21 U.S.C. §§ 841 and 860(a). He was sentenced to 236 months of imprisonment, eight years of supervised release, and a \$2,000 fine.

Hewitt argues that § 860, as applied to him in this case, was not a valid constitutional exercise of federal authority by the United States Congress

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

because it does not require a nexus with interstate commerce or regulate a commercial activity. His argument is foreclosed by this court's holding in *United States v. Dixon*, 132 F.3d 192, 202 (5th Cir. 1997).

Next, Hewitt asserts that the evidence produced at trial was insufficient to support the jury's verdict. Because Hewitt failed to preserve this challenge for appeal, our "review is limited to determining whether there was a manifest miscarriage of justice, that is, whether the record is devoid of evidence pointing to guilt." *United States v. Delgado*, 256 F.3d 264, 274 (5th Cir. 2001) (citations and internal quotations marks omitted). However, our review of the evidence shows that it was sufficient to support the jury's verdict even if Hewitt's challenge had been preserved. *See Jackson v. Virginia*, 443 U.S. 307, 318 (1979).

The judgment of the district court is AFFIRMED.