

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

November 10, 2011

Lyle W. Cayce
Clerk

No. 11-40263
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JAMES ALVIN GODFREY,

Defendant-Appellant

Appeals from the United States District Court
for the Eastern District of Texas
USDC No. 1:09-CR-158-1

Before KING, JOLLY, and GRAVES, Circuit Judges.

PER CURIAM:*

James Alvin Godfrey pleaded guilty to one count of possession with intent to distribute cocaine and received a within-guidelines sentence of 210 months in prison. On appeal, he asserts that the district court should not have attributed 383.8 grams of crack cocaine to him as relevant conduct under U.S.S.G. § 2D1.1. Godfrey asserts that he has consistently denied any knowledge of crack cocaine and that the Government failed to present sufficient evidence connecting him to those drugs.

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

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The Government moves for summary affirmance, asserting that the drug quantity had no effect on the applicable guidelines range. In the alternative, the Government seeks an extension of time to file an appellate brief.

Because the Government has failed to point to controlling authority from this circuit or the Supreme Court that forecloses Godfrey's claim, summary affirmance is inappropriate. Thus, the Government's motion is denied. However, as the Government notes, the appellate argument is without merit. Godfrey's sentence was not determined based on the drug quantity calculation. Instead, his sentence was determined based on his status as a career offender pursuant to U.S.S.G. § 4B1.1. The argument concerning relevant conduct is irrelevant based on the facts of this case. Accordingly, we deny as unnecessary the Government's motion for an extension of time to file an appellate brief and affirm the judgment of the district court.

AFFIRMED; MOTIONS DENIED.