

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

United States Court of Appeals
Fifth Circuit

FILED

May 3, 2013

Lyle W. Cayce
Clerk

No. 12-20302

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

BARRY LERNARD DAVIS, also known as Sir Lewis,

Defendant-Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:09-CR-390-1

Before JONES, DENNIS, and HAYNES, Circuit Judges.

PER CURIAM:*

Barry Lernard Davis appeals from the judgment entered following his resentencing. He was convicted of sex trafficking of children, transportation of a minor with intent to engage in criminal sexual activity, and coercion and enticement to engage a person in prostitution or other criminal sexual activity. We affirmed the conviction and vacated the sentence in part because the district court erroneously imposed a two-level multiple count adjustment to Davis's offense level, pursuant to U.S.S.G. § 2G1.3(d)(1). We affirmed the imposition of

* 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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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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a five-level adjustment pursuant to § 4B1.5(b)(1) because Davis engaged in a pattern of activity involving prohibited sexual conduct with minors.

On appeal from his resentencing, Davis contends solely that the district court erred by imposing the five-level adjustment for engaging in a pattern of prohibited sexual behavior with a minor. He construes this court's previous opinion as allowing him to offer evidence to rebut the presumption of correctness he alleges is given to presentence reports. Because we affirmed the five-level adjustment in the previous appeal, Davis was barred from relitigating that issue in the district court. *See United States v. Lee*, 358 F.3d 315, 320-21 (5th Cir. 2004); *United States v. Marmolejo*, 139 F.3d 528, 531 (5th Cir. 1998) (*Marmolejo II*).

AFFIRMED.