

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-20245

United States of America,

Plaintiff-Appellee,

v.

Dennis Lee Green,

Defendant-Appellant.

Appeal from the United States District Court
For the Southern District of Texas
(H-99-CR-510-1)

August 13, 2001

Before DAVIS and JONES, Circuit Judges, and PRADO*, District Judge.

PER CURIAM:**

Dennis Lee Green challenges the sufficiency of the factual basis for his plea of guilty to conspiracy to commit arson in violation of 18 U.S.C. § 371. The facts of this case are very similar to those of United States v. Johnson, 194 F.3d 657 (5th Cir. 1999), vacated by 530 U.S. 1201, 120 S.Ct. 2193 (2000), on remand, 246 F.3d 749 (5th Cir. 2001), where we held that the facts presented by the government were insufficient to show that the

*District Judge of the Western District of Texas, sitting by designation.

**Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

church burned by the defendant was actively employed for commercial purposes. Likewise, the facts presented by the government in this case are insufficient to show that the Bryan United Pentecostal Church was actively employed for commercial purposes. See also Jones v. United States, 529 U.S. 848, 120 S.Ct. 1904, 146 L.Ed.2d 902 (2000); United States v. Odom, ___ F.3d ___, 2001 WL 585710 (11th Cir. 2001); United States v. Rea, 223 F.3d 741 (8th Cir. 2000). Accordingly, there was an insufficient factual basis for Green's plea. We therefore VACATE Green's plea and REMAND this case to the district court for further proceedings.

VACATED AND REMANDED.