

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 01-10787  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

DERAY DAVIS, also known as Pleasure Wilson,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:01-CR-7-1-A  
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February 21, 2002

Before JOLLY, JONES, and BENAVIDES, Circuit Judges.

PER CURIAM:\*

Deray Davis, a/k/a Pleasure Wilson, appeals his sentence after pleading guilty to possession with intent to distribute cocaine base. He raises a single issue, whether the sentencing guideline applicable to crack cocaine, U.S.S.G. § 2D1.1(c), is unconstitutional in that it violates the Due Process Clause, the Equal Protection Clause, and the Eighth Amendment's prohibition against cruel and unusual punishment. He contends that this guideline is unconstitutional due to its disparate treatment of defendants who possess crack cocaine versus powder cocaine. He

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

acknowledges that this court has previously rejected this argument and raises the issue for the purpose of preserving it for further appeal. See United States v. Wilson, 105 F.3d 219, 222 (5th Cir. 1997) ("This court has previously rejected equal protection, Eighth Amendment, and due process challenges to the disparate sentencing provisions for cocaine base contained in the sentencing guidelines.").

The Government has filed a motion to forego the filing of a formal appellate brief, due to the fact that Davis raises this single issue foreclosed by circuit precedent.

The Government's motion is GRANTED, and Davis' sentence is AFFIRMED.