

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 01-41110
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GERALD GALLAWAY,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:00-CR-62-1

May 23, 2002

Before DAVIS, BENAVIDES and CLEMENT, Circuit Judges.

PER CURIAM:*

Gerald Gallaway appeals his 151-month sentence following his jury-trial conviction for conspiracy to distribute and possession with the intent to distribute cocaine base and heroin, in violation of 21 U.S.C. §§ 841(a)(1) and 846. Gallaway contends that his sentence was imposed in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000).

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

Gallaway did not challenge his sentence on these grounds in the district court, thus, this court reviews his assertion for plain error only. See United States v. Vasquez-Zamora, 253 F.3d 211, 213 (5th Cir. 2001). Because Gallaway was sentenced below the statutory maximum for the offense charged in his indictment, there was no Apprendi violation. See United States v. Keith, 230 F.3d 784, 787 (5th Cir. 2000), cert. denied, 531 U.S. 1182 (2001); United States v. Randle, 259 F.3d 319, 322 (5th Cir. 2001). Gallaway has not shown plain error; indeed, he has not shown any error at all. Accordingly, we AFFIRM.

AFFIRMED.