

**December 16, 2004**

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 04-40599  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee.

versus

EMORY ALLAN PETTRY,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Eastern District of Texas  
USDC No. 4:03-CR-43-RAS-ALL  
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Before KING, Chief Judge, and DeMOSS and CLEMENT, Circuit Judges.

PER CURIAM:\*

Emory Allen Pettry appeals his sentence following a guilty plea conviction for possession of a controlled substance with intent to distribute, using and carrying a firearm during and in relation to a drug trafficking crime, and manufacturing an unregistered firearm. Pettry argues that the district court misapplied the Sentencing Guidelines by enhancing his offense level for manufacturing an unregistered firearm on the basis that Pettry manufactured the firearm in connection with another felony

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

offense. Pettry argues that the sentence enhancement is erroneous in light of U.S.S.G. § 2K2.4, comment. (n.4), because his sentence for manufacturing a firearm is to be served consecutively to his sentence for using and carrying a firearm during and in relation to a drug trafficking crime.

Pettry's sentence for manufacturing an unregistered firearm was not enhanced based on his use of a firearm, but because he manufactured the device in connection with the felony offense of manufacturing methamphetamine. Accordingly, we find no error in the district court's sentencing determination. United States v. Washington, 340 F.3d 222, 230-31 (5th Cir.), cert. denied, 124 S. Ct. 942 (2003).

AFFIRMED.