

May 1, 2007

Charles R. Fulbruge III  
Clerk

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 06-50325  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

XAVIER JONQUE WHEELER,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 5:03-CR-391  
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Before DeMOSS, STEWART, and PRADO, Circuit Judges.

PER CURIAM:\*

Xavier Jonque Wheeler appeals his 322-month sentence for attempting to manufacture 50 grams or more of crack cocaine, possessing with intent to distribute cocaine, possessing a firearm in furtherance of a drug crime, and being a felon in possession of a firearm. Wheeler argues that his sentence is unreasonable because it is based on judge-found facts rather than facts that he admitted or that were found by a jury.

The district court is allowed to find facts and is required to determine a defendant's proper guideline range of imprisonment

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 R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR.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

before sentencing him. United States v. McKinney, 406 F.3d 744, 746-47 (5th Cir. 2005). Wheeler's sentence was within a properly calculated advisory guideline range and is entitled to great deference. See United States v. Mares, 402 F.3d 511, 520 (5th Cir. 2005). Giving such deference to Wheeler's sentence, and recognizing that the sentencing court considered all the factors for a fair sentence under § 3553(a), we conclude that Wheeler has failed to demonstrate that his sentence was unreasonable. See id. at 519-20. The judgment of the district court is AFFIRMED.