

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-8471  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

ROBERTO GUERRERO,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Western District of Texas  
(A 92 CR 17 (4))

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(October 18, 1993)

Before JOLLY, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Roberto Guerrero pleaded guilty to charges in a superseding information of conspiracy to possess with intent to distribute marijuana (count one) and conveying a firearm to a known felon (count two), in violation of 21 U.S.C. § 846 and 18 U.S.C. § 922(d)(1). The PSR stated that the statutes require a period of supervised release of "at least 3 years" on count one and "not more

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

than 3 years" on count two. The PSR calculated a guideline range of 188 to 235 months. On count one, the district court departed downward two levels for acceptance of responsibility and imposed a 151-month term of imprisonment in a guideline range of 151 to 188 months. The district court imposed a concurrent term of 120 months for count two. At the sentencing hearing, the district court imposed "a five-year term of supervised release on each count to run concurrently." Guerrero filed a timely notice of appeal.

Guerrero's sole argument is that, because the district court erred when it imposed a five-year term of supervised release on count two, his sentence should be vacated and remanded so that the term can be modified to three years, the maximum term allowed under that count.

At the plea hearing, the district judge informed Guerrero that his sentencing exposure included "a term of supervised release of at least three years" on count one and "not more than three years" on count two. The term actually given, a five-year term of supervised release, was within the statutory limits for count one. See 21 U.S.C. § 841(b)(1)(C); 18 U.S.C. § 3583(b)(1). The government agrees that the district judge made a technical error at the sentencing hearing when he indicated that the five-year term of supervised release would run "on each count." The government, however, contends that the error is harmless under the "concurrent sentence doctrine" because a five-year term of supervised release is not dependent on Guerrero's conviction under count two. The

government is correct. See U.S. v. Stovall, 825 F.2d 817, 824 (5th Cir.), modified on other grounds, 833 F.2d 526 (1987).

Furthermore, the written judgment of the district court also indicates that, "[u]pon release from imprisonment, the defendant shall be on supervised release for a term of five (5) years" and omitted the erroneous reference at sentencing that the term would run on each count. In the light of the written judgment, we translate the district court's oral misstatement that the five-year term would run on both counts to be simply that--a misstatement. The judge intended to sentence Guerrero to serve one five-year term of supervised release. Because the five-year term of supervised release was permitted for count one, Guerrero's sentence is

A F F I R M E D.