

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8223
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CLARENCE ANTHONY BUTLER,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. MO-92-CR-95(1)
- - - - -
(July 21, 1994)

Before POLITZ, Chief Judge, and JOLLY and DAVIS, Circuit Judges.

PER CURIAM:*

Clarence Anthony Butler pleaded guilty to one count of possession of cocaine base with intent to distribute and was sentenced to 135 months imprisonment, five years supervised release, and a \$50 special assessment. As part of his plea agreement, Butler waived his "right to appeal all issues relating to the sentencing guidelines unless there is a substantial departure upwards." He appeals his sentence arguing that U.S.S.G. § 2D1.1 violates equal protection and due process

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

because it treats possession of one gram of cocaine base as the equivalent of 100 grams of cocaine powder.

A defendant may waive his statutory right to appeal his conviction and sentence as part of the plea-bargaining process. United States v. Melancon, 972 F.2d 566, 567-68 (5th Cir. 1992). Because Butler does not challenge the validity of the plea agreement or the appeal-waiver provision, his appeal is DISMISSED.