

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-10764

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS G. McKENZIE,

Defendant-Appellant.

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Appeal from the United States District Court for the  
Northern District of Texas  
(4:94-CR-10-A)

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February 13, 1996

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

PER CURIAM:\*

Our review of the briefs and the record convinces us that the sentence in this case must be affirmed. The enhancement due to a firearm is clearly appropriate because the weapon was reasonably foreseeable to McKenzie. United States v. Aquilera-Zapata, 901 F.2d 1209, 1215 (5th Cir. 1990). McKenzie's objection that he was held accountable for 160.5 grams of cocaine base, instead of 108.5 grams of cocaine base, was not raised below. Inasmuch as the amount constitutes a factual finding, it is not subject to

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\*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

appellate review. United States v. Guerrero, 5 F.3d 868 (5th Cir. 1993), cert. denied, 114 S.Ct. 1111 (1994). In any event, however, the sentence in this case did not affect a substantial right because the sentence is within the guideline range for 108.5 grams. United States v. Lopez, 923 F.2d 47, 51 (5th Cir.) (citation omitted), cert. denied, 500 U.S. 924 (1991).

A F F I R M E D.